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Impossibility of Implementation of Commitment and Its Types (A Comparative Study of Laws of Iran and England)

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Abstract. Impossibility of implementation of commitment is a legal status which has several legal effects. This matter has not been applied in the laws of Iran and England but many topics have been discussed about the conditions, types and effects of it. This legal status might be created from the time of creation of commitment or after that and it might make the implementation of all of the commitment or a part of it permanently and temporarily impossible, either material or non-material depending on the committed or absolute persons.

In writing this article, the research has been done with a descriptive and analytic method and by using library resources which are available for the researcher. First, the legal status of the impossibility of the implementation of commitment is being determined and after that the types of excusing oneself from the commitment in terms of its effects and evidence on the validity of the commitment and the civil liability arising from it is being reviewed and studied.

Keywords: Commitment, Impossibility of Implementation, Frustration, Excusing Oneself, Contract, promisee, promisor.

Introduction

Commitment is a binding relationship between the promisor and promisee. And in the framework of this relationship, the promisee can obligate the promisor to do an action or not to do an action or to make financial transfer (Jafari Langeroudi, 1389, p 27; Katouzian, 1382, v 1, pp 17 – 19). In some cases, due to some conditions that happen to the promisor or the subject of the commitment or the promisee, the implementation of the commitment becomes impossible. Therefore, the first effect of the commitment, which is the power that the promisee has to obligate the promisor, will be lost generally or partially and temporarily or permanently. In these conditions, the promisee will face an issue with the title of the impossibility of the implementation of the promisor.
The purpose of this article is to determine the impossibility of the implementation of commitment as a legal status and its types. In fact, this research has been outlined based on three basic issues. First, what does the impossibility of the implementation of commitment basically mean and in what sense has it been interpreted in various legal systems. To what extent the used interpretations can cover the matter of the impossibility of the implementation of commitment in the sense of meaning and effects.

Second, what are the forms and types of the impossibility of the implementation of commitment and in terms of what can it be divided and whether these divisions are incisive or not. Can an non-implementable commitment be categorized in multiple divisions from various aspects or not.

Third, basically, what are the results of dividing the impossibility of the implementation of commitment from different aspects and what are the effects of the impossibility of the implementation of commitment in the frame of each of the presented divisions? And how can these divisions be of help in the determination of the legal effects of the impossibility of the implementation of commitment for the researcher.

Based on the above questions, the upcoming research is developed with a descriptive ad analytical method and in the frame of two general parts. In the first part, the meaning and concept of the impossibility of the implementation of commitment and similar terms which are associated with it. And at the rest of the article, various types of the impossibility of the implementation of commitment has been reviewed and studied from various aspects and the effect of this legal status will be determined in each division.

1. Concept of the impossibility of the implementation of commitment and its relevant terms

Commitment in its legal meaning includes the personal, financial and legal relationships of two or more persons, based on which one side could force the other one to do and action or not to do an action or make financial transfers (Yazdanian, 1392, p 70). The act of the subject of commitment can be a legal act or just a financial act. Anyway each commitment that is implemented in the legal world has three pillars. These three pillars of each commitment are the promisor, promisee and the subject of commitment.

The purpose of creation of each commitment is to implement it. But it does not mean that each commitment ends with its implementation. In some cases the commitment is lost and canceled before its implementation. For instance, the promisee might release the promisor from his or her commitment. And also the promisor might break his or her promise and refuse to implement the commitment. The subject of the discussion of this article is those cases in which the commitment is not implemented, rather that those cases in which the commitment is canceled by the promisee or the promisor breaks the promise. But the subject of discussion is those cases in which the implementation of the
commitment is not possible. The main point in this article is the fact that the impossibility of the commitment is not due to the promisor's refusal and it is not his or her will. Therefore, the cases in which the promise releases the promisor from the commitment or the promisor breaks his or her promise are not considered in the discussion of the impossibility of the implementation of commitment.

Impossibility of the implementation of commitment or the time when the commitment becomes impossible is legal status that the implementation of all or a part of them becomes impossible due to the barriers that are created in the way of the implementation of commitment. This legal status might exist from the time of conclusion or creation of the commitment. And it might occur after the conclusion of the contract and creation of commitment and before its implementation. It does not mean that the impossibility of the implementation of commitment is permanent; but rather sometimes the impossibility of the implementation of commitment is temporary and not permanent. It is even possible the promisor is the reason for the impossibility of the implementation of the commitment and others might be able to implement it.

Anyways, the legal status of the impossibility of the implementation of the commitment is a legal event, because it does not arise from the will of each side of the commitment in the contract. It doesn't matter if the impossibility of the implementation of the commitment is due to the behavior of the promisor or the promisee or the particular status of the subject of the commitment. It is even possible for the implementation of commitment to be forbidden due to the intervention of the external factors such as the law, enforcement occurrence or the third parties. The thing that is significant in this discussion is the effects of the impossibility of the implementation of commitment as a legal occurrence.

The effects of the impossibility of the implementation of commitment can generally be divided into three categories. The first category is those effects are enforced by the impossibility of the implementation of commitment on the validity of the contract. Thus, the impossibility of the implementation of commitment become the cause of the cancellation or rescission of the contract which is the base of it or put the other side in charge of rescission of the contract or continuation of the obligation of the commitment.

Another case of the effects of the impossibility of the implementation of commitment is the effects that it has on the other side. In other words, the impossibility of the implementation of commitment can cause the cancellation of the commitment of the other side or it can make the commitment of the other side undecided or provide the conditions for execution of the imprisonment right of the promisee.

And finally, the civil liability can be considered as one of the effects of the impossibility of the implementation of commitment. In fact, impossibility of the implementation of
commitment can cause some damages to the other side, and these damages lead to the civil liability of the promisor and require compensation for damages. Although in the laws of Iran, in the article 190 of the civil law the possibility of the implementation of commitment has not been referred to as one of the conditions of the accuracy of the contract, but the given criterion can be used about the terms of the contract in which the validity of the condition has been mentioned as the condition of its accuracy\(^1\). And it can be stated that since the impossibility of the condition (subsidiary commitment) is less important than the impossibility of the main commitment, therefore in the first way the possibility of the implementation of the commitment is one of the conditions of the accuracy of the contract and the commitment is based on it.

The article 190 of the civil law is concerned with the conditions of accuracy in concluding a contract and it is not against the conditions of continuing the validity of the contract which has been concluded accurately. Thus, it is necessary to seek another criterion for the persistence of the validity of the contract and to review the role of impossibility of the implementation of the commitment in this criterion. The base of the obligation of the both sides of the commitment in the laws of France and England is the obligation of the other side to the content of the contract (Katouzian, 1392, v 2, p 246; Riper et Boulanger, 1957, N 280). Now if the impossibility of the implementation of the commitment led to the lack of obligation for the commitment one of the sides, it would mean that the other side shall not be committed to his or her end of the commitment as well. Although this basis has not been accepted explicitly in the laws of Iran, but the available provisions in the civil law indicate that the theory of the cause of commitment shall be accepted in this legal system.

In the Islamic jurisprudence, which is one of the fundamental principles of the civil law of Iran, the impossibility of the implementation of the commitment has been reviewed with the title of impossibility of implementing the covenant (Mohaghegh Damad, 1406 AH, v 2, p 132) and the effects of it has been reviewed and explained in every piece of the jurisprudence (Tabatabayi Qomi, 1423 AH, p 152). Impossibility includes a barrier that the promisor is not able to control it which prevents the promisor from implementing the commitment and it is divided to the general impossibility and particular impossibility based on the personal width (Tabatabyi Yazdi, 1409 AH, v 2, p 594; a number of authors, under the supervision of Hashemi Shahroudi, 1423 AH, v 4, p 400; Mostafavi, 1423 AH, p 202). The difference between the impossibility which has been used in the jurisprudential resources with the subject of impossibility of the implementation of the commitment which is the topic that is being discussed in this article is that usually, the

\(^1\) Article 232 – the following conditions that have been explained are invalid but they do not corrupt the contract: 1. A condition that is not possible to perform. 2. A condition in which there is no interest or benefit. 3. A condition that is illegal.
impossibility of executing a promise is concerned with an implemental impossibility that occurs after the creation of commitment and conclusion of the contract and it does not include the barriers that were available at the time of concluding the contract. There is no equivalent for the legal status of impossibility of the implementation of the commitment in the laws of England. But the term frustration covers several instances of the cases of the impossibility of the implementation. The title frustration cannot entirely cover all of the instances of the impossibility of the implementation of the commitment either. Cancellation of the contract (frustration) includes particular circumstances and conditions that suddenly and unexpectedly occur during the process of implementing a contract and they create a situation which is completely different from the situation of the time of the conclusion of the contract and they naturally affect that situation. Circumstances and conditions were those that, at the time of concluding the contract, none of the sides of the contract not at all considered or even agreed with the implementation of it in such conditions (Paul Richards, 2002, p 307).

The term frustration in the oxford dictionary includes <<sudden dissolution and end of the contract, due to the circumstances that have made the implementation of the contract and commitments impossible or have made the contract seem so different that what had been predicted before that it will be unreasonable for us to want the sides contract to be committed to it. This regulation is the result of the impossibility of the implementation of the contract and the commitments which happens unexpectedly – whether it occurs naturally or legally in which case it is not possible for us to blame each of the both sides of the contract – and it cancels and disbands the contract.>> (Walker, David M, 1980, Frustration).

Another one of the differences between the impossibility of the implementation of the commitment and the term frustration in the laws of England is the fact that impossibility does not include obscurity of the implementation of the commitment and it just includes those cases in which the implementation of the commitment has become impossible not intricate. In contrast with frustration that includes the obscurity cases of the implementation of the commitment as well.

<<Obscurity>> which is derived from the jurisprudential regulation <<denying difficulty and distress²>> (Naraghi, 1417 AH, p 173; Hosseini Maraqi, 1417 AH, v 1, p 282) means that implementing the commitment becomes so difficult and hard or excruciating that the promisor faces difficulty and distress while implementing the contract. Thus, obscurity is different from the impossibility of the implementation; as it was said, the act of implementation is possible in the obscurity but doing it is really difficult and excruciating, but in the subject of impossibility, it is not possible to do the action at all.

² Arabic نفى عسر و حرج
This difference is shown in the effects as well. Under any circumstances, obscurity cannot forcibly lead to the dissolution of the contract. While in many cases the impossibility of the implementation of the commitment leads to the enforcing dissolution and cancellation of the contract. Therefore, in this article only various forms of the impossibility of the implementation of commitment is reviewed and those cases that are related to the obscurity of the implementation of the commitment are not discussed as a subject in this article.

2. Divisions of the impossibility of the implementation of commitment

The impossibility of the implementation of commitment can have different forms. In other words the impossibility of the implementation can be divided into various validities and the most important one of these validities includes: the time of realization of the impossibility of the implementation, time range of the impossibility of the implementation, thematic range of the impossibility of the implementation, personal range of the impossibility of the implementation and finally the source of the impossibility of the implementation.

The impossibility of the implementation is divided to original (primary) and passing in terms of the time of the creation, it is divided into temporary and permanent in terms of the temporal range, and to partial and general in terms of thematic range, and to absolute and relative in terms of personal range and to real (material) and valid (legally).

The given division and differentiating these types from one another, in addition to giving a better definition of the subject, gives some formulas that will act as guidance in the emergence of the sentence of each of them.

2.1. Impossibility of the original and passing implementation

The impossibility of the implementation is divided to original (primary) and passing in terms of the time of the creation. When there is the impossibility at the time of concluding the contract, it is called original (Jafari Langeroudi, 1357, v 1, p 886). In this type of the impossibility, implementation of the commitment at the time of the conclusion of the contract is not possible; like transferring the stolen property that cannot be accessed again. In contrast with the original or primary impossibility, there is the passing and future impossibility of the commitment. In this type of impossibility, the commitment is created accurately and it is possible and practicable at the time of its implementation and then due to some reasons which are not related to each party, it becomes impossible. When the impossibility is original, concluding a contract in terms of impossibility of the primary implementation is cancelled. In this assumption, basically a commitment is not created (Sanhouri, 1985, v 3, p 983). Because agreeing on an action which is not doable indicates that both parties are not seriously determined to create a commitment (Katouziyan, 1371, p 140).
In Iran's civil law, the impossibility of the implementation of the contract has not been mentioned in the category of the basic conditions of the accuracy of the contract; but the first paragraph of the article 232 of the civil law has stated that a condition of the time of the conclusion of the contract which cannot be done is invalid. And also the article 348 of the mentioned law, about the outsold, states: "selling a thing that selling it is legally banned or a thing that does not have rational tax or benefit or a thing that the vendor does have power to submit it is invalid, unless the customers are able to submit themselves."

What is very well meant by these legal provisions and other provisions in this field as well is that the possibility of implementation is among the basic conditions of the accuracy of any contract. The silence of the legislative in this case is only due to historical reasons (Katouzian, 1369, v 2, p 400). In Imamiye jurisprudence, the public regulations of the treatments have not been developed separately with the method of current laws. The jurisconsults review these regulations in the contract of selling which is a complete example of the businesses and it is the oldest one among them. In such way that the civil law has followed this custom and it has discussed the regulations which are associated with the dissolution of the contracts in the category of the discussions of concluding a contract. Developing the public regulations of the contracts is inspired by the civil law of France. In this law, in the conditions of the conclusion of the contract, the power of submitting and the possibility of the implementation has not been discussed, but the legal writer have mentioned this regulation that "no one is bound to do the impossible" on the subject of commitment (Planiol and Ripert, 1959, p 620).

In jurisprudence, the financial buying and selling that no one has the power to render it, is considered to be invalid. The reason of such provision has been mentioned to be lack of paying taxes to customs and thinkers, and the fact that this group of contracts is fatal and lack of prudence (Khansari, 1373 AH, p 378; Najafi 1400 AH, v 22, p 386; Ansari, 1368, p 188; Mousavi Khomeini, 1363, v 3, p 202). Sheykh Ansari thinks that the reason for invalidity of such selling is prohibition of fatal selling by the holy prophet and he believes that this prohibition is due to corruption (Ansari, 1386, p 185). He thinks that trading a property that lacks the power of its rendition indicates lack of prudence and he believes that seizing the price is making the property null and it is not right (Ansari, 1386, p 186).

In the laws of Iran, in the invalidity of contract through the impossibility of its subject, knowledge or lack of knowledge of the party or parties does not affect this impossibility (Katouzian, 1368, v4, 783; Khansari, 1373 AH, p 385).

An also in the laws of England, the condition for creation of a valid and binding commitment is that a "consideration" would be the opposite of it or that it would be
created in the form of a <<deed>>. In these laws, the causeless (consideration) commitments are not qualified for legal value (Treitel, 1991, P 63) and one of the conditions of the consideration is that it has to have economical value (Loc. Cit, p 79).

By taking what has been said into consideration, it might be inferred that the impossibility of the implementation may prevent the creation of the contract and lead to its invalidity; because it alters and influence the correlation of the commitment and its cause. Note that, apparently the impossibility of the implementation can be interpreted and explained with the lack of consideration (cause of commitment) or lack of economical value for the consideration and through this aspect, it can be decided that the commitment is not valid. But in these laws, if a person took on the responsibility of an impossible commitment, while both sides were aware of this impossibility, he has to deliver; because he or she has took on an absolute commitment (Loc, Cit, p 823).

For example, when the seller is committed to deliver the goods in the port which the ships cannot enter, he has accepted an absolute responsibility and he will be responsible for not doing it (Loc, Cit, p 823). But when the parties do not have knowledge of the impossibility of the implementation and conclude a contract without being aware of not having power over implementation and with an imagination of its possibility, the decision is different. In this assumption which is mentioned with the title <<mutual mistake>>, the contract is considered as an invalid one; because the mistakes alters and damages the satisfaction of the both sides (Anson Sir William, 1959, P 426; Treitel, Op. Cit, P 822).

English jurists distinguish <<mistake>> with <<frustration>>. Because mistake happens when there is the impossibility of implementation at the time of concluding a contract but the sides of it are not aware of the impossibility; but frustration is related to the time that the impossibility occurs after that. In his lawsuit, <<Griffiths>> (Griffith V. Brymer, 1903, § 434) is concerned with the invalidity of a contract based on which a place was rented to watch the coronation of Edward VII, King of England; without having knowledge of this fact that the mentioned event had already been abolished due to the sickness of the king. The opposite of this situation exists in the lawsuit of <<Krell>> (Krell V. Henry, 1903, § 740). In this lawsuit, before the cancellation of the mentioned event, a similar contract had been concluded. The first lawsuit is the example of mistake and the second one is the example of frustration (Treitel, Op, Cit, p 822). The effect of mistake differs from the effect of frustration. In mistake, the contract is invalid from the beginning. But in frustration, the contract becomes invalid in the future and in fact it becomes dissolved and cancelled.

In the laws of America – unlike England and what there is in the laws of Iran – if the impossibility of the implementation existed simultaneously with the contract, generally and without considering the knowledge or lack of knowledge of the both sides about this
matter, the contract would be considered as an invalid one (Arthur Linton Corbin, 1962, § 1326; William, 1939, § 461), because the parties do not at all intend to implement such agreement and they don't even expect the implementation of it. Therefore, the commitment lacks cause as one of the necessary and basic elements of it (William Mack, Op. Cit, p 462). In these laws, when the promisor is aware of the impossibility of the implementation and the promisee is not aware of it, the promisor will be forced to implement his or her own commitment; because he has accepted an absolute commitment. In contrast, when the promise is aware but the promisor does not have knowledge of it, there won't be an obligation (William Mack, Op. Cit).

Nevertheless, it can be seen that there is a basic difference between the laws of Iran and the laws of England on the original and settled impossibility of implementation. In the laws of Iran, the primary impossibility leads to the invalidity of the contract without considering the knowledge or lack of knowledge of the parties. Whereas in the laws of England, this effect limited to those cases in which the lack of implementation is not the subject of the awareness and knowledge of the parties. Thus, when the parties conclude a contract with the knowledge of impossibility, they accept an absolute commitment and therefore, they are obligated to implement it and they will be responsible for the damages which are caused by the impossibility of the implementation.

What was said was about the original or primary impossibility. The passing or future or occurring is the opposite of these type of impossibility. As it was stated, the passing impossibility is an impossibility that happens through a barrier on the way of implementation of the commitment after the realization of the contract is done accurately. Like the financial loss that its submission in the contract has become commitment. While the mentioned property has already been transferred and it must have been submitted to the transferee. In the laws of England, this type of impossibility is mentioned with the title "frustration" (Treitel, Op. Cit, p 822).

Therefore, the implementation of the commitment might become impossible from the beginning and at the stage of formation of the contract or after the formation of it. The contract is invalid in the impossibility of the implementation of the commitment of the contract, in the stage of the formation of the contract. For example, about the commitment of the hired agent in a lease contract in order to beat the third party or the commitment to give the money of the case of win or lose in gambling to the winner, that in both cases the commitment cannot be implemented and is impossible or each type of the commitment to an illegal matter or an affair which is in contrast with the public system or good morals and behaviors and also implementation of a commitment which is impossible in terms of finance or subjectivity, in all of these cases the commitment is not valid. For example in the article 348 of the civil law of selling a thing that buying and
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-selling it is legally forbidden or a thing that does not have rational benefit or tax or a thing that a thing that the vendor does not have power to submit it, is invalid.

According to the analytic mechanisms of contract, with the occurrence of the barrier of the implementation of commitment and impossibility of implementation of commitment after the formation of the contract in the laws of Iran, the mentioned commitment is distressed and the contract which is associated with it is cancelled, but until the time of the occurrence of a barrier, the contract shall be considered as an accurate one. The sentence of the cancellation of a contract due to being illegal is obtained from some of the articles of the civil law such as article 527 about the contract of farm letting and paragraph 4 of the article 551 about partnership and article 683 of this law on the contract of law.

Therefore, the separation of the impossibility of the implementation of the commitment of the contract from the beginning and impossibility of the occurrence after the formation of the contract has some results. These results show that in the first type, the contract is invalid but in the second time, based on the case of it, the contract will be cancelled or in some cases the creation of right cancels it or suspends the implementation of the contract. In order to be released of the responsibility caused by the lack of implementation of the commitment or the delay of it, the burden of proving the occurring impossibility is the responsibility of the promisor and each time that he or she is not able to prove the deterrent factors, he or she shall pay the damages caused by the lack of implementation of the commitment or the delay of it to the promisee (article 227 and 229 of the civil law). Also about the conditions at the time of the conclusion of the contract, if it was obvious that it did not exist at the time of the conclusion of the contract, the condition would be invalid but the contract would be accurate and the person who has benefited from the condition could cancel the contract.

2.2. Impossibility of the temporary and permanent implementation

The impossibility of implementation with the validity of the time range can be divided into temporary and permanent. The impossibility of the implementation might be permanent and it might never be resolved, such as the case in which the subject of submission commitment is just like a certain thing that is wasted. With the loss of the subject of commitment, the implementation of it will permanently become impossible.

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3 Article 227 – when the violator of implementing the commitment is sentence with the payment of damage that cannot prove the lack of implementation has been because of an external cause which cannot be relevant to him or her.

Article 229 – if the promisor was not able to fulfill his responsibility due to an occurrence that he or she does not have the power to prevent it, he or she won't be sentenced with damage payment.

4 Article 232 – the conditions that are explained as follows are invalid but they do not corrupt the contract: 1. A condition that is impossible to implement. 2. a condition that does not have benefit or regulation. 3 a condition which is illegitimate.
And also, it is possible for the impossibility of implementation to be temporary; such as the case that the mentioned property is out of reach due to being captured by the state for a limited time.

Based on the fact that the impossibility of the implementation is permanent or temporary, it will have different effects. When the impossibility is permanent, the commitments are voided and the contract is dissolved and this is among the most apparent instances of the impossibility of the implementation of the commitment and thus, here the commitment becomes resolved and the contract is cancelled. However, when the impossibility is temporary, the principle of obligation basically remains and the commitment won't be voided, but the implementation of it will be suspended (katoziiya, 1368, v 4, p 786; Planiol & Ripert, Cp. Cit. § 1324; Arthur Linton Corbin, Op. Cit, § 1344). The article 150 of the Iran maritime law dictates: <<if a ship was not able to exit the port because of the coercive power, the lease contract will remain the same as ever for the conventional time and the damage which due to the delay in the movement of the ship will not be claimable>>.

But of course, the lack of dissolution of the contract due to the impossibility of the temporary implementation and suspension of implementation is only until the time that the implementation of the contract would not radically look different from what the parties desired. For example when the implementation of the contract is subjective in the required deadline and implementation of the contract has a desired unity with the time of it, the temporary impossibility will also lead to the extinction of commitments, and the dissolution of the contract (Mohaghegh Damad, 1374, p 115)(Planiol & Ripert, Op. Cit, § 1324), because in some of the recent case, lack of implementation exits in the sentence and the implementation of the contract won't benefit the promisee. For example, when the owner of a restaurant is committed to prepare warm food for the guests of an event which will be held in a specific date, if he was not able to implement his or her commitment in the set date due to some reasons that is not relevant to him or her, the commitment would be voided and dissolved. Because the next possibility of implementation will not at all be satisfying for the promisee. This sentence shall be implemented in all of the cases that the implementation of the contract shall be done in a limited and specific date and the contract includes a certain period and the impossibility occurs in this period (Shahidhi, 1368, p 169). The cases in which the commitment is constant, such as a lease contract, if according to the period that has been set, if the person who has rented was not able to benefit any more, and this impossibility included the time period of the contract, the contract of the mentioned lease will be cancelled. Although, if after the time period of the contract, the possibility of exploitation exited, since the period of the contract would end with the expiration date of it, this period will not be extended.
Necessity of commitment in cases that the temporary impossibility in the provision of the impossibility is not permanent, in some of the cases, the promisee has the right to cancel the contract, like the temporary impossibility of the submission of the vendor (Katouzian, 1368, v 3, p 606) and when the impossibility is permanent, it will lead to dissolution, because the subject based on providing which the contract is concluded will be completely cancelled in the permanent impossibility.

It shall not be left unsaid that the view of some of the jurists who believe that the legal impossibility is absolutely and always a permanent impossibility (Jafari Langeroudi, 1356, p 6) is far from the truth. Considering the fact that the law might impose some situational restrictions, and this is not incompatible with the durability of law and legal regulations.

Also in the laws of England, the temporary impossibility of the implementation does not basically lead to the dissolution of the contract. In these laws, the temporary impossibility only leads to the cancellation and decline of the contract, when it strongly influences the intention of the both sides of the contract (Cheshire & Fifoot, 1976, PP.48-49); such as those cases in which the impossibility of the implementation of the commitment includes the main part of the contract, or that the implementation of the contract is required in a specific period of time (Treitel, 1989, P.290). This concept has been explained in some of the lawsuits very well. In the lawsuit of <<Cricklwood>> (Cricklwood, 1945, p 252), it has been stated that the temporary restrictions which are imposed by the state in the field of building houses and supplying raw materials, has not confuted a 99-year lease for building houses; because the restrictions that were described, by considering the fact that they are temporary and due to the long duration of the contract, have not changes the nature of the lease contract. Or in the lawsuit of <<Tamplin>> (Tamplin, 1916, p 397), the House of Lords decided the continuation and maintenance of the lease contract for the time that was left from the time period of the lease contract of the ship. In the mentioned contract, the steamship F. A. Tamplin, had been rented for five years and from the fourth of December of 1912 to the fourth of December of 1917. In the February of 1915 and in the conditions of war, the state captured the ship and made some changes in the body of it in order to make it suitable for its own usage.

Those who had rented were willing to pay the pay rent, based on the contract, so that the contract would remain. In contrast, the owners of the ship claimed that the contract has been sterilized due to the actions of the state. This claim was stated with the intention to take control of the ship which would lead to achieving more income. The House of Lords, with the sentence of validity of the contract, stated that: <<the pause has not been long enough to change the implementation of the contract and make it irrational and that the ship might be available for several months for the desired business intentions, before...>>
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the time that the contract became invalid for five years. Because the contract was lease that included a period of time, and it was not for a specific intention so that they could consider it as a sterilized contract. >> (Anson Sir Wiliam, Op. Cit. P.433) this opinion of the House of Lords can be based on two facts; firstly, the impossibility of the implementation has not included all of the period of the contract and the contract can be implemented in the remained time. The other one is that the impossibility of the implementation has affected the benefits and rights of the promisee. Thus, when he or she is willing to continue the contract and believes that the continuation of and maintenance of it is beneficial for him/herself, the request of the other party that will receive his or her rights for the pay rent, seems meaningless and thus it does not influence the position. Since the frustration doctrine is implemented when the contract changes, in a fundamental way compared to what was desired by the parties, and the impossibility destroys the basis of the contract. That is why, when the effect of the impossibility is not basic due to the fact that it is temporary, but it somehow influences the rights of one side, the possibility of giving the right of cancellation to him or her has been accepted; for example, in a employment contract with a long duration or one has an indefinite duration in which the employee becomes sick, but this sickness is temporary, the contract won't be sterilized; but it is possible that the employer might have the right to cancel the contract (Treitel, 1991, p 779). Or in cases that the employer becomes arrested in terms of committing a crime, the employer will have the right to cancel the contract (Treitel, 1991, p 299). In contrast, when the temporary impossibility makes the implementation of the contract seems radically different from the intended form, it might lead to the cancellation of the contract. In the lawsuit of << Acetylene>> (Acetylene Co, 1922, §456) in which the conditions of war have acted as a barrier in the way of implementation of the contract associated with selling the goods of the subject of the contract for three years, it was stated that the seller is not obligated to implement the contract at the end of this time; because the conditions of the market has radically changed (.Loc. Cit. p 290). And also about the contracts which are associated with the personal services, if the promisor was arrested in the conditions of war, or he was called to military service, although these are not permanent, but if they lasted so much that they would alter the intentions of the parties, the contract will be sterilized (Cheshire & Fifoot, Op. Cit, PP. 548-549).

As the mentioned matters are indicative as well, about the temporary impossibility of the implementation and its effects and provisions, there is no significant difference between the laws of Iran and England. In both of these laws, the criterion of the implementation of this rule is this, whether the temporary impossibility of the implementation has made the contract basically different from what was intended by the ones who had concluded
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the contract or not? If the answer is positive, the contract will be cancelled and if it was negative, the promisee might be in charge of cancelling the contract. And also when the impossibility of the implementation is permanent, the contract will be dissolved and in the current chapter, this nothing will be discussed in this regard.

2.3. General and partial impossibility

The impossibility of the implementation of the commitment is divided into general and partial, in terms of the subject range of it. The impossibility might just include a part of the contract; such as loss of one carpet from two carpets that were the subject of the commitment. And also it is possible that all parts of the subject of the contract become impossible. In the first assumption, the impossibility is partial and in the second one it is general and total. The sentence of these two impossibilities can be different.

In general, what cause the dissolution of a contract and decline of the commitment is the occurrence of the impossibility, and losing the purposes and directions (main) of the contract of one side or both of them. Wherever the impossibility of the implementation has such following results, the sentence shall be the downfall of the contract. And the point that shall be paid attention to is that this might be due to the partial impossibility of the implementation.

In partial impossibility, cancellation of the contract in the impossible part is obvious and what is questioned is the part that remains in the contract and that how does the impossibility affects this part. This matter shall be discussed a lot. If the contract could not be parted, to the extent that the partial implementation would lack the intended benefit and desire, the partial impossibility will lead to the cancellation of the whole contract (Safayi, 1364, issue 3, p 128); because the subject of the contract was in its entirety satisfactory for the party which is influenced by the partial impossibility. But if the partial implementation of the contract was useful and beneficial for the other party, in this assumption the partial impossibility basically won't affect the validity of the contract in this part and only the impossible part of the contract will be cancelled (Sanhouri, 1958, v 3, issue 589, p 988). A commitment that cannot be parted is a commitment which cannot be analyzed in terms of subject or by considering the intention of the parties (Jafari, Langeroudi, 1372, v 1, no. 156). A contract based on which a shop and the storage room near it are rented, to an extent that each of them alone and without the other one are not sufficient for the intended utilization, is considered as an irresolvable contract. Now, if for example municipal possessed the mentioned shop in the implementation of legal projects, the contract will be cancelled completely. In the mentioned assumption, the contract is resolvable in terms of subject, but the consideration of the intention of the renter; it means that the utilization for the intended job is considered to irresolvable. There is the public relation and absolute particularity between the irresolution of the subject and irresolution of the intention of the both sides.
Wherever the contract is resolvable in terms of subject, the intention of the parties will also be as such, but when it is not irresolvable by considering the intention of the parties, it does not necessarily mean that in terms of subject it is irresolvable as well. Partial impossibility might also be created due to the time; it means that the contract would become impossible in a part of its duration. This situation happens in pension contracts, such as rent and contract of farm letting which was explained in the previous discussion and with the title of temporary and permanent impossibility.

The mentioned rule in the partial impossibility means the dissolution of the contract in the impossible part of it and its validity compared to the remained part in the assumption of state of being resolvable of the contract and cancellation of the entire contract, in the assumption of the state of not being resolvable of the contract, also exists in the laws of England. In these laws, the state of not being resolvable of the contract might as well be in terms of subject or due to the intentions of the considered parties. In the lawsuit of <<Taylor>> (Taylor, 1863, p 826), in which a garden and the hall adjacent to it had been rented according to a single contract in order to some concerts to be performed there, when the mentioned hall was burned in a fire, it was stated that the entire contract has remained sterilized, even though the garden is not damaged and it is in the same condition as the beginning; because the commercial particularity of the subject of the contract had been destroyed and in the opinion of the promisee, the garden was desired besides the hall not without it (Treitel, 1989, p 291). In the laws of England, whenever the main intention of the both sides of the contract is cancelled, even if it is due to a partial impossibility, the entire contract is considered as a sterilized one. In the lawsuit of <<Denny Mott>> (Denny Mott, 1944, p 265), in a long term contract of selling timber, it had been agreed that the buyer would rent an open factory of timber to the seller. When the wood transactions were announced forbidden by the state of the area, it was stated that the contract has been sterilized entirely and that the seller cannot request the implementation of the contract about the rent of the factory; because the main subject of it, which was the wood business, had become illegal (Treitel, 1991, p 788). In contrast, in the lawsuit of <<Cricklwood>> (Cricklwood, 1945, p 252) which was referred to in the previous discussion as well, it was stated that the temporary restrictions of the time of war about building houses has sterilized a 99-year lease contract for building houses (Treitel, 1991, P 789) (Vincent Powell, 1973, P140).

Also in the laws of America, if a contract could be divided in its own structure, the impossibility of the implementation in one part of the contract will not affect the necessity of the other parts of it (Arthur Linton, Corbin, 1962, p 1338). For example, if the promisor was only able to implement a part of his commitment in the field of preparing and proding the goods of the subject of the contract, due to the confiscation of
his factory by the state, if the other party wanted to, the promisor shall be obligated (Loc. Cit, P 1345).

The question that comes to mind is that those case in which the partial impossibility does not sterilize and dissolve the entire contract, in terms of the state of being resolvable of the contract, does the promisee have the control to cancel the contract? In other words, will he/she be able not to accept the implementation of the contract in the possible part? What was expressed about the laws of America apparently indicates the existence of such option and authority. In the laws of England, this subject has not been discussed explicitly, but it has been accepted implicitly in some cases (Treitel, 1991, p 779; 1989, p 299), including in employment contracts that were mentioned before. Also in the laws of Egypt, the existence of such authority for the promisee has been emphasized and its cause has been considered the impossibility of the obligation of the promisee to accept a part of the mentioned quest (sanhouri, 1958, v 3, no. 589, p 988).

About the sentence of subject in Iran, we shall say that perhaps we can consider the provision of the article 441 of the civil law which is about the having the authority of the discrimination of selling from the aspect of expurgation of the intention, current in this case as well and based on this analysis, we might give the right of cancellation of the contract to the creditor. What has been mentioned in the laws of Egypt as the cause of such authority, which is the impossibility of the obligation of the creditor to accept a part of the quest, the provision of it has also been mentioned in the article 277 of the civil law of Iran; but it does not seem that the mentioned article is explicitly concerned with this discussion and thus, we cannot say that the described authority is based on this legal provision. What is now being discussed is the validity of the contract over the part that it is still impossible to be implemented and about the limitations of this validity and nothing else. Thus, it seems that the documentation of the Egyptian jurists is not concerned with the case.

2.4. Absolute and relative impossibility of implementation

The impossibility of the implementation of the commitment is divided to absolute and relative in terms of the personal range and variety of it. Sometimes the impossibility of the implementation is absolute and comprehensive and inclusive, and the implementation of the commitment is not possible both for the promisor and others; but in some other cases, this disability is personal and it is limited to the promisor. The first assumption is an instance of absolute impossibility and the later one is the relative impossibility.

Sometimes the impossibility that happens in the way of the implementation of the commitment is of that kind which takes the ability to implement the commitment, not only from the promisor, but also any other person. It shall be noted that the absolute impossibility only refers to those cases in which the implementation of the commitment
by the promisor and others is not normally possible, not even when some particular persons, by considering their special abilities, would be able to do it. These types of cases in which the possibility of the implementation of the commitment has only been taken from the promisor and he does not have the power to do so, considering the particular situation he or she is in, but others can do such thing and they can help the promisor in this matter, the impossibility will in them will be relative. In this kind of impossibility, the implementation is impossible for the promisor and possible for others; it means that the promisor could take advantage of the abilities of others. The relative impossibility does not free the promisor from the responsibility. In this case, the provision of the two legal systems of Iran and England are the same. If the impossibility of the implementation was due to the personal disabilities, the promisor will not be able to be free of the responsibility (Katouzian, 1371, no. 140; Halsbury, 1981, p 309).

Some consider the conventional human as the criterion of judgment and say: "the laws cannot expect a force higher than this from one side of the contract and ask him or her to behave like a legendary human. On the other hand, special nihilisms and disabilities of the promisor shall not lead to exemption of the promisor from implementing his commitment and be used to the detriment of the other side of the contract. Unconventional burden is on the shoulders of the powerless." (Katouzian, 1368, Vol. 4, p. 783; Katouzian, 1370, No. 169). In the laws of France, what leads to the impossibility of the implementation for all (absolute impossibility) is considered as a force major incident and not only for the promisor (relative impossibility) (Safayi, 1364, no. 3, p 119). And also in the laws of America, they distinguish the absolute and relative disability in the regard. And also in this legal system, if due to the unexpected incidents, only the promisor was unable to implement his or her commitment, the commitment won't be voided and the danger and responsibility of such disability will be enforced on the promisor (Arthur Linton Corbin, 1962, P 1332).

2.5. Real and valid impossibility of the implementation

The impossibility of the implementation is divided to real "material" and valid "verdict and legally" in terms of its nature and also due to the validity that it arises from.

Sometimes the impossibility has materially and physical aspect and the implementation of the contract become impossible in terms of material, such as waste of the subject of the commitment, or when the action which has been promised becomes impossible due to the occurrence of coercive forces. When a ship that has been rented becomes aground, due to the occurrence of strong tidal and the intended exploitation of it becomes impossible and cancelled, the implementation of the contract becomes impossible in terms of material. Or in cases that the contract of farm letting, the subject of the contract loses the ability to grow crops, due to the severe deficiency of precipitation, the
implementation of the contract of far letting has become impossible in terms of material. In the material impossibility of the implementation, there is a real impossibility which cannot be overcome. And also in those contracts in which the of stewardship the promisor him/herself is the basic term of the commitment and the promisor passes away, the impossibility is material.

On the other hand, it is possible for the implementation of the contract to be considered impossible without becoming impossible in terms of material and even with the material possibility of the implementation and that is when the implementation of the contract is prohibited and the content of the contract is announced illegal. In these cases, the impossibility has a validity aspect. When the trade of the goods of the subject of the contract becomes prohibited or business with certain country nationals is against the law, or the continuation of a certain commercial activity is prohibited or some certain commercial activities are monopolized by the state, the implementation of the commitments which have arose from all of the contracts that have been concluded with the mentioned cases and have not been implemented, will be prohibited and in a sense, the implementation of the contract will be legally impossible.

Division of the impossibility of the implementation in this aspect is different from the previous divisions. This division introduces two different aspects of the impossibility of the implementation. One of these aspects is <<material impossibility>> which is rooted in the subject of the contract or the conditions surrounding it and the other one is <<legal impossibility>> which is due to an external factor and in a general sense, it is referred to as coercive force or law. The origin of these commitments that cannot be implemented includes various types of governmental actions, regulations, and orders, or circumstances in which the implementation of the contract is banned.

Even though these two types of the impossibility of the implementation have different natures, but their effect is similar and there is no difference between them in terms of affecting the contract. Both of them cause the downfall of the commitment and innocence of the promisor and in one word, they lead to the cancellation of the contract. Nevertheless, there are two basic differences between them that cause their apparent distinction. The first difference is about their causes. The material impossibility is usually created as a result of material factors and causes such as natural incidences or condition that happen to the both parties of the contract. The causes of the material impossibility mainly have a material aspect. But the validity impossibility is created as a result of a change in the laws and regulations, issuing a demanding order, exercise of sovereignty by the government or the occurrence of hostile and war relations and all of these reasons are related to validity.

Another obvious and specified distinction is the nature of these two impossibilities of the implementation. The impossibility is related to material and in a real sense and in the
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other one, it is related to verdict and validity. But the basic similarity of these two is in the fact that both of them somehow make the implementation of the contract impossible as a factor that is not in control of them and it is dominant and they lead to the cancellation of the contract and the downfall of the commitment and in one word, they have the same effect on the contract. With this explanation, the legal and theoretical basis of this effectiveness is different, but the final and ultimate effect is the same. This fact can be considered as the second thing that distinguishes them.

The basis of the material impossibility, in several case, is related to the intentions of the parties; but in the legal impossibility, the will and intention of the parties will not have this apparent role; but it rather gives its place to a concept which is called <<general regulrity>>, that even the authority of the parties is not able to neutralize it. Of course, it must be mentioned that the existence of the important basis of general regularity in the legal impossibility is not inherent with the negation of the role of the intention of the parties in this regard. But it is also possible for the implementation of a commitment to be impossible both legally and in terms of material. What is important is that this material possibility cannot withstand the legal impossibility, because the concept of general regulation dominates the wills of the parties.

At the end, referring to two other points seems necessary:

1. The material impossibility can have two forms, which means that sometimes due to some causes that are related to the subject of the commitment, the implementation of the contract becomes impossible which is interpreted as the <<subject impossibility>> such as waste of property for which the commitment has been concluded and sometime it becomes impossible due to some reasons that are relevant to the parties of the contract which is called <<personal impossibility>> such as death or sickness of the promisor in those contracts in which the stewardship of the promisor is one of the basic terms of the commitment. In the impossibility related to validity these two aspects are expected as well. It means that legal prohibition can also include the subject of the contract or its parties.

2. Some of the factors of impossibility of the implementation can find bilateral forms; it means, sometimes they make implementation of the contract impossible physically and in terms of material and sometimes legally or in terms of validity as well. War is a factor of this type. War makes the implementation of the contract impossible in terms of matter, sometimes due to the military activities and the risks or the complications are involved in it, and some other times, without the effect of these aspects of the war, in the conditions of war, the implementation of the contract becomes impossible legally and in terms of validity. When there is a hostile and war relationship going on between two countries, establishment or continuation of any kind of business relationship, might be considered helping the enemy or an action
against the national security and it is basically like this and that is why the implementation of the contracts that have been concluded with the nations of the country that is the enemy will be prohibited.

Conclusion

Doing this research on the subject of the impossibility of the implementation of commitment and reviewing its types has the following results:

1. Impossibility of the implementation of commitment has not been used exactly and with this title in any of the legal systems, therefore, the causes and effects of it in most of the legal systems has been used under the titles such as impossibility, frustration, force majeure, commitment, and impossible condition.

2. Impossibility of the implementation of commitment is most of the legal systems, free of titles that have been assigned to it, is one of the basic conditions of the accuracy of the transactions. Although the article 190 of the civil law, which counts the basic conditions of accuracy, has not mentioned it; but it is one of the general and basic rules which dominates the conditions of accuracy and validity of the commitments.

3. The causes of the impossibility of the implementation of commitment can be categorized in three general categories. The first category is related to the subject of the commitment. Under circumstances such as loss of the certain subject of commitment, the possibility of the implementation of commitment becomes cancelled. The second category is among the causes of the impossibility of the implementation of commitment concerned with the situation and conditions and behavior of the parties of the contract. For example, the death and passing away of the promisor will cause the implementation of the commitment to face some problems caused by the promisor. The third category is those causes of the impossibility of commitment which is relevant to the external factors such as force majeure (coercive force) and role of law and sovereignty and intervention of the third parties.

4. Impossibility of the implementation of commitment has different forms and it can be divided based on various validities. The most important of these validities are: the time of realization of the impossibility of implementation, time range of the impossibility of implementation, subject range of the impossibility of implementation, personal range of the impossibility of implementation and finally the origin of the impossibility of implementation.

5. The impossibility of implementation is divided to original (primary) and passing in terms of the time of creation, it is divided into temporary and permanent in terms of the temporal range, and to partial and general in terms of thematic range, and to
absolute and relative in terms of personal range and to real (material) and valid (legally).

6. The effects of the impossibility of the implementation of commitment on the accuracy and validity of commitment and contract which is the origin of it, depending on the flaws and damages which are done to the intention of the parties of the contract and their purpose of creating the commitment, can lead to nullity, dissolution and suspension of the commitment and in some cases, it gives the right of cancellation or dissolution of the contract to the promise.

7. Impossibility of the implementation of commitment itself is not a source of civil liability. But if the impossibility of the implementation of commitment caused a non-negligible loss for the promisee and this loss was obviously related to the promisor through his or her guilt or otherwise, the promisor will be responsible for providing for the damage that has been done to the promisee.

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