



## PLACE OF FAVER CONTRACTUS IN INTERPRETATION OF CONTRACTS

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### ABSTRACT

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Goal of concluding each contract is to enforce its provisions and also bind to its resulting effects. In order for a contract not to face barriers at time of enforcement, the parties shall have no dispute over provisions and terms of contract but this is not always true and occurs in most cases. At this time, it is necessary to discuss interpretation of the contract as an essential and necessary solution. One of the applied and complex issues in law of obligations and contracts is interpretation. It can be said that interpretation is a connection between theoretical domain in law and what occurs in the world and the physical reality of a contract. Art of a judge and lawyer is to clarify uncertainties based on the governing principles and rules of interpretation and to discuss interpretation, rules and tools and it will be possible to effectuate the parties' intention only based on such principles. One of the principles which plays major role in clarification of the concepts and contents of a contract in interpretation is Faver Contractus. This principle has been accepted by legislator in law of Iran in Article 223 of Civil Code and also had historical and religious history in law of Iran. This principle has become so prevalent that it is known as a universal rule in the field of law. In most legal systems and also international judicial precedents, the Faver Contractus has been mentioned under different titles and themes all of which mean the desired Faver Contractus in Islam law. The legal attitude of other countries toward literal meaning of the complex terms with different and opposing meanings which are in one contract is in line with meaning of the Faver Contractus though it is not completely identical. Regarding the Faver Contractus, lawyers and jurists have summarized dispersed and sometimes opposing materials about place and time of application and use of this principle in their books and theories relating to them and they have been discussed in their place. In this research, solution of this principle regarding interpretation of contracts which is one of the important subjects of private law and is of special importance in different legal systems has been discussed by explaining and studying nature of the Faver Contractus and its history and also studying types of interpretation methods and different legal schools, then reasonable and legitimate result of applying the Faver Contractus in ambiguity cases has been achieved in the contracts considering less studied aspects in the Islamic jurisprudence and decisions of the lawyers.

**Key words:** place, faver , contractus, contract, provisions

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## INTRODUCTION

Undoubtedly, what is the essential and main description in law of contracts is the parties' intention and conflict of these intentions and all of these contracts are result of this essential element and goal of interpretation of this contract is to effectuate the parties' intentions in stage of conclusion and also enforcement of a contract and obligations. Where there is dispute among the parties due to doubt and ambiguity in text of the contract or special conditions in stage of enforcement of a contract, the judge shall help resolve this dispute through interpretive means and strengthen steps of justice in this way. To use the methods and factors affecting the interpretation, study of the interpretive schools in this regard can solve the problem. These rules and principles provide the opportunity for the judge to understand intentions of the contracting parties therein and then issue verdict on its basis. Extent of social needs increases communication in different fields. In this regard, the contract is recognized as the main tools in communication. Although the common request of the contracting parties and dealers is to conclude and also enforce a contract completely and without any uncertainty of a contract, we know that this intention is not achieved in all cases and enforcement of contract faces doubt and opposing interpretations in some of its parts. It is reasonable that its ambiguous cases should be revised instead of ignoring a contract so that the parties' intention is specified. Since the parties fulfill their intentions for conclusion of the contract immediately by interpreting a contract. Interpretation of a contract is in favor of the parties personally. Each interpretive principle should be applied at appropriate time or the desired effect will not end to the reality. In addition, the judge shall try to recognize correct concept of the provisions of the contract before enforcing principles of interpretation in a contract and can clarify uncertainty by virtue of some evident principles of interpretation from a contract. One of these general and universal principles is the Faver Contractus. This principle which has been referred in law of Islam and also in Civil Code is applied in cases of uncertainty of the Faver Contractus or no Faver Contractus of which customary occurrence and also apparent form are certain. What is in domain of interpretation based on the Faver Contractus is recognition of nature and effects and uncertainties in a contract and the parties' intention has been valid for its creation. However, scope of interpretation has two stages by relying on the Faver Contractus. The first stage relates to development and conclusion of the contract and the second stage relates to effects of a contract. What is important and essential in the primary stage is study of the presence or absence of the created intention of persons with attitude of the Faver Contractus in conclusion of a contract to see if this created intention has its own effect on creation of legal nature or it can be said with uncertainty in this stage that willingness and consent of the parties to conclude a contract have not been achieved. The important point is that interpretive scope of a contract governs inherent intention and will of the parties and also their apparent intention. In case an interpretation is realized and it is specified that if parties' intention has been created for conclusion of void contract, the contract will not be realized. In legal system of Iran, interpretation of the written contract is done in stage of conclusion and enforcement for effectuating the parties' intention, however, the parties' intention should be inferred from the parties. The parties cannot produce evidence when their real intention is contradictory to provisions of the deed or has not been declared truly, there is a belief that dependence of the contract interpretation on common intention of parties is an assumption which is not consistent with realities and needs of society but some means such as custom and resort to the Faver Contractus in specification of the manner of contract conclusion by some contractual words and terms can be a solution in interpretation of the contract. Therefore, the interpretive principles should not be used except where provisions of a contract are ambiguous. The contract interpretation is used for the presence or absence of the same contract. It is interpreted and received with the Faver Contractus and other interpretive principles. Contract interpretation is also important in effects of the contract due to determination of the scope of effects and enforcement of provisions of the contract. What affairs the contracting parties shall perform should be interpreted because there is no conflict between conclusion of the contract and its enforcement. However a true contract may be concluded but its enforcement faces some problems due to ambiguity in the contractual words and terms. Aside from stage of conclusion and enforcement of the contract and practical channel of interpretation in these stages, it should be noted that interpretation inferred from the Faver Contractus has also some limitations considering its special meaning in nature and enforcement and change in conditions of other factors. In fact, domain of enforcement of the Faver Contractus in interpretation of a contract

which is specification of conditions of a contract is limited because the uncertainty of all issues cannot be clarified and the contract cannot be clarified by resorting to the Faver Contractus .

#### Legal definition of the word “validity”

In terminology of law, the word validity has been defined. It means validity of a legal act (act resulting from the created or uncreated intention such as intention of the confessor) and means that the act has been performed according to legal conditions. In definition of the Faver Contractus, the term the Faver Contractus means principle of validity in contracts and unilateral obligations if it is not accompanied by another word. Civil act speaks only about the Faver Contractus in contracts and says in Article 223: any transaction which has been performed bears validity unless its invalidity becomes evident). This article includes unilateral obligations with identical bases. the said article is purported to be a relative legal circumstantial evidence that is the assumption of the law is that each contract which has been concluded is valid and a person who claims for nullity or its ineffectiveness shall prove his/her claim and they have referred to this definition regarding the Faver Contractus” By virtue of this principle in the contracts and unilateral obligations , the law assumes their validity and the claimant for invalidity shall produce evidence for invalidity and the Faver Contractus in transactions (which are more particular than contracts because the transaction doesn't include marriage ). In Article 223 of Civil Act, it has been stipulated that it is interpreted as the principle bearing validity.

#### LEGAL HISTORY OF THE FAVER CONTRACTUS

Study of different legal systems in human societies and attitude to judgments and observation of the practical events indicate that in usage of the humans, the method which humans follow is based on the Faver Contractus aside from any legal teachings and humans resort to the Faver Contractus through prudence and reliance on their relations and such prudence is deniable in all levels of society and as a usage and phenomenon. In summary, it has been said that the jurist becomes jurist when he knows others as jurist to some extent and by accepting the Faver Contractus in special cases by the sacred law, it has been concluded from this discussion that signature is the usage and is not regarded as a new establishment. Therefore, it should be mentioned that documented principle of consensus is a legal customary presumption like principle of legal presumption of continuity of the status quo in doubtful cases and not only in law of Islam which has penetrated into all legal systems, measurement manner of prudence for the Faver Contractus is that if we accept that this principle is not regarded as a basis in transactions, people shall produce evidence in their transactions so that if the party claims for its invalidity, he can defend him in the court . It is evident how difficult it is to prepare and collect the evidence and how catastrophic it is. This is possible when human communities are able to recognize and judge about justice by the competent authorities at any time and place, otherwise, the problem will increase. Based on theory of most jurists such as Sheikh Ansari who resorted to this belief, they have said that there is disorder in relations of people which is called source of difficulty and incapacity.

Imam Khomeini in the book” Istishab” says that one can rely on the narrations which are available in different chapters of jurisprudence for this rule and mention narration about ceremonial washing, funeral of the dead body and prayer for the deceased and these actions are required religious duties and required religious duties will not be waived unless people perform that action. The Muslims rely on act of others in these cases. This reliance is due to enforcement of the Faver Contractus such as the Friday prayer or the narration which the innocent imams have mentioned about marriage and divorce or trade with property of orphans and forgery of the judge, ruler and imam all indicating application of the Faver Contractus.

Ayatollah Mohammad Javad Maghnieh, writer of 7-volume interpretation of al-kashef in his book which he has written in Arabic language has interpreted place of the the Faver Contractus that news of the Muslims shows that Islam seeks for light of belief in heart of the pagan and expects the liar to tell truth and this should be cautionary for those who accuse the people with wrongdoing and treachery

immediately and thoughtlessly and attribute them to heresy. In words of Imam Khomeini in the book "Rasael" ,it has been mentioned that which is translated as follows: it is evident that this rule has been applicable before advent of Islam religion among the people and since human has started his social and civilized life and followed divine or customary laws and all types of transactions became prevalent among them , this rule has been applicable among them and this rule had been enforced like possession and action rule and following reliable news had been applicable among the religious people and non- religious people. The Muslims and non-Muslims followed this rule and even didn't wait for a special order from the legislator. Muslims accept actions of other followers of the religions such as marriage and divorce and their contracts as a religious action in our period.

Such approach and attitude by the true religion of Islam indicate that the Faver Contractus is one of the signed orders which Islam has accepted considering importance and expansion and with full knowledge about all efficient and systematic dimensions of this principle.

Evidence of the Faver Contractus

Book

(O you who believe! Avoid most of suspicion, for surely suspicion in some cases is a sin, and do not spy nor let some of you backbite others. Does one of you like to eat the flesh of his dead brother? But you abhor it; and be careful of (your duty to) Allah, surely Allah is Oft-returning (to mercy), Merciful). In this verse, the implication which is hidden in word of God is use of rule or principle of validity (the Faver Contractus) because suggestion of this verse to the Faver Contractus is based on the fact that there will be causes of disorder and also suspicion among the Muslims by mistrusting in one's religious brother. Another verse is (Say ton people Ok) or another verse is (Fulfilled the contracts). Most jurists regard these verses as indicative of ethical Faver Contractus which can be applicable in jural chapters.

## **TRADITION AND NARRATIONS**

It has been said in narrations that one of the things which is not good for the believer and from which he can escape is suspicion and mistrust and the way of escaping from suspicion is not to perform it. In another narration, the believer has not been prevented from three traits one of which is suspicion. . (don't follow your suspicion). For Faver Contractus, some narrations have been argued. For example, Amiralmomenin(PBUH) says: obey order of your brother in the best manner and don't judge based on suspicion in your word unless you are certain about the truth. (Trust in work of your brother). Ayatollah Makarem says about this narration: this narration relates to ethical validity and the word

in narration implies ethical validity and he has concluded that it only includes the believers and is not generalized to non-believer. One can refer to (people possess their money) (believers in their own terms) from other narrations. Hazrat Imam Sadegh says that if a believer accuses his brother, faith will be dissolved in his heart as salt is dissolved in water.

## **REASON AND BASIS OF THE REASONABLE PEOPLE**

In written by Sheikh, it has been said that if the basis is not on this principle that this principle will be enforced in tradition of the reasonable people, there will be disorder in livelihood system of the people. The created disorder resulting from abandonment of this principle is more than the disorder resulting from application of this principle. In narrations of the innocent imam (PBUH) , it has been mentioned that possession is the cause of ownership and if there was no such rule , the Muslims would be misguided that is what is necessary to be a reason would not be guided if it was not a reason. Therefore, the Faver Contractus on this basis can be regarded as reason. Mr. Makarem also accept the brief view of Sheikh that if we don't accept the reason order of Faver Contractus , there will be disorder in the system. Mr. Sharif Kermani also regards nature of objects based on validity and adds that if we don't accept it, there will be obstruction in evidence. Ayatollah Mirza Hashem Amoli

says that if an action not bearing validity is not based on the reason, there will be chaos and disorder in social life system and lead to hardship.

### **SUBJECTIVE VALIDITY OR OBJECTIVE VALIDITY OR REAL VALIDITY**

If we regard an action bearing validity and we mean the person who has performed that action, that validity will be called subjective validity and if we mean a person who suspects about another person's act, that validity will be called objective validity and if we mean validity before God, it will be called real validity. In this regard, Ayatollah Makarem Shirazi says (The meaning of health in this rule that is true realism and etc ...) (validity means real validity. This famous word is the reason for the Faver Contractus whether it is tradition of the reasonable people or consensus or disorder of the system. The Faver Contractus means real validity not subjective validity unless this principle will not be applicable. Therefore, if validity means obligatory decree, the validity will be called subjective validity but in case validity means validity for enforcement of the regulatory decree, it will be called real validity. Considering view of most jurists, we conclude that the Faver Contractus means real validity not subjective validity. Of course, less famous words such as Sheikh Najafi Khansari has regarded the Faver Contractus as the subjective principle in (Pay back norms). Where the subject doesn't mean valid and invalid and the bearer has knowledge about failure to recognize subject, the jurists believe that the subject with validity is problematic as Sheikh Morteza Ansari has said (explain the problem that is susceptible in the act of jealousy from other is informed of the knowledge of the correct actor. Feedback and corrupt the act and the criminal). Of course, it seems that validity means real validity not subjective validity. All people regard incorrect and illegal affairs as correct and appropriate though it causes to prevent disorder of the system in tradition of the reasonable people for enforcement of this principle at time of doubt about another act by interpreting it correctly. That we ask question about the practical factor during its performance if he regards his act as proper or not is not intended, therefore, the Faver Contractus means real validity. Therefore, this verdict is almost due to appearance of the Muslims who don't perform bad action or is the major cause of prevention from disorder in the system.

### **1-3- NECESSITY OF INTERPRETATION OF THE CONTRACT**

Before we can interpret the contracts, it is necessary to know what is important. Naturally, if we use article 191 of Civil act which says(( the contract will be realized by the intention to create legal relations on the condition of closeness to what implies the intention)) or article 10 of Civil act which says((the private contracts are effective for those who have concluded them in case they are not the expressed opposition of the contract}} referring to principle of freedom of contract, we will notice that focus of the contracts is on intention to create legal relations. therefore, for interpretation of the contract, all efforts should be made to bring us to intention and goal to create a contract. By mentioning that sovereignty system in Iran is based on inherent will, the main factor of concluding a contract is intention to create legal relation, thus, main goal of that intention should be considered to the same degree. In case intention to create legal relation cannot be found, there will be need for more interpretation of contract. Most problems are identified by law interpretation not the law itself. One of the ways of reaching intention to create legal relation is mentioned in article 224 of Civil Code and it stipulates that )the rational words are portable on customary meanings) and literary meaning. Legislator regards words of the contract bearing custom because the contracting parties are among the people and if we cannot discover the real will, the best way for reaching real will is the custom. In fact, we should pay attention to real will in interpretation but if we cannot discover the real will, we will establish their implicit or purported will with custom and the like. Custom means society and thought which I and you have and I and you become equivalent to custom.

Now, the question arises that how it should be interpreted in case of lack of custom. If we pay attention to other laws such as civil code of France and other countries, when they come to interpret the contract, they will have some general principles which are regarded as rule of interpretation and in case the real intention and then custom are not discovered, they will interpret the contract with these general principles. The general rules are the last effort to reach intention to create legal relation. For example, in (Journal of rulers of justice )of Egyptian government, an article stipulates that (First

speech acts of negligence ) means that if there is a word in the contracts and it bears useful meaning and useless meaning in a contract, the useful and effective meaning will be used because humans inherently don't perform useless work. Of course, we can infer this result in laws of Iran from the *Faver Contractus* . Another rule which can be referred is interpretation of the contract against writer of the document. It means that if a contract text is written and writer signs it such as the added or imposed contracts or the sample contracts, if there is a gap in them, the interpretation shall not be done in favor of the writer but it shall be in favor of the signatory. Of course, we don't have any principle in law of Iran for this rule but one can refer to principle of autonomy in laws. Therefore, we can mention silence of writer of a document who could make condition and expression in his favor at time of conclusion that is he kept this case open in favor of the opposing party unless otherwise he expressed. Another sample of these general rules is writing of numerical or alphabetical figures where the principle focuses on the alphabets in case of dispute. Of course, we have this principle in article 227 of Commercial code which can be referred. There are different interpretations of the contracts in some cases of law. For example, fundamentals of interpretation differ in interpretation of the added contracts or international commercial contracts because they have special characteristics. But all interpretations sometimes should be done uniformly and with one rule. In Law of Iran, contract interpretation is regarded as law interpretation while contract interpretation is one of the subjects of private law and law interpretation is one of the subjects of public law and fundamentals of these two cases are different.

In case of mistake by the contract interpreters, an irreparable oppression will occur. A key point in interpretation of the contract is that construction doesn't occur in interpretation but only discover is done. A contract may be interpreted by mistake so that a new contract is concluded by them. Now, we should discover real agreement of the parties from the inherent and apparent wills or with the new interpretation methods not forge the contract. In interpretation of the contract, we should pay attention to the following points: firstly, interpretation of contract is the starting point of other discussions of contracts such as proof, description or titling of the contract name, completion of the contract defects with complementary custom and law and modification of the contract. Secondly, there are new principles and methods of interpretation for interpretation of ordinary or special contracts such as added contracts, governmental contracts and sample contracts which should be considered and discussed more. Some rules such as interpretation against writer , priority of manuscript over typing and priority of letters on numbers , interpretation of words based on the contract as a whole not as a part , attention to location of word in text of the contract and other rules like this are of special importance. When the contract is interpreted, we mean finding intentions of the contract builders in the best manner. In this regard, different schools and theories have been presented by the legal thinkers. In summary, a contract can be interpreted in two methods: firstly, some believe that one shall respect for the contract which is an agreement between the parties and is the private law of the parties and shall be interpreted and executed as it is present and secondly, the second group believes that the contract shall be managed because the contract is dependent on the interest and invalidities which should be considered more because contract is a social event. They think that administration of justice and interpretation are more correct in this way and lead to good faith of the contractual relations. These people believe that one shall perform the unwanted conditions and obligations such that the obligor doesn't sustain loss more than ever by modifying the contract and also interpreting it because the obligor didn't want to accept the obligations more than his power in case of ambiguity about the contract . Some who believe in admiration of the contract and considering text of the contract say that what is important is enforcement of the contract irrespective of its dependencies and some who regard attention to interpretation as proper considering social realities are worried that decision and view of judge about a contract shall be consistent with justice and custom of that society.

Certainly, interpretation is discussed when the parties enforce a contract because law of the settlement time is the text of the contract. Scope of interpretation discussion shall be specified from two viewpoints: type of announcement of the wills which are interpreted and clarity and ambiguity of the terms of contract.

In the first viewpoint, it can be said that courts practically interpret any type of contract whether written or verbal and document even the documents of the general partnerships. General rules of

contract interpretation are applied for interpretation of any announcement of will even if it is not within a special contract. In the second viewpoint, it is discussed if interpretation is efficient only in scope of the ambiguous terms of the country or in scope of the clear terms. For this reason, it is necessary to study interpretation in cases of clarity of the contract. Those who believe in the inherent will and apparent will in this regard shall be separated. The believers in inherent will believe that interpretation means discovery and unveiling of the hidden case and if interpretations of a text are clear and explicit, there is no hidden and implicit case which interpretation can reveal and that we judge that real meaning and main intention of the terms are their apparent meaning, it will not be regarded as interpretation. Based on theory of apparent will, interpretation is not necessary in clear terms because another case is hidden beyond the terms so that its intention becomes doubtful. One of the important results of studying two theories of inherent will and apparent will is that any case which brings the human to his intention will be accepted based on acceptance of the inherent will and there is no difference between words and other prominent things and circumstances out of the contract, therefore, if there are evidences which are not among the prominent cases of the contract (that is they have not created the contract and conditions with them) and their appearance is stronger than the clear words, we desist the words and as a result, clear terms will be interpreted based on this theory. Based on priority of the apparent will, if the prominent cases of will (i.e. the tools with which the contract and its conditions have been created though non-verbal cases are like other actions or evidence) have clear implication have no doubtful purports with evidence out of the contract even emergence of these evidences is stronger and principle of priority of the apparent will clarifies its role in this point and causes not to desist announcing clear wills with any external evidence and as a result, clear terms cannot be interpreted due to stronger emergence of the external evidence. The important point in both theories is that in case other evidences which are the prominent cases of will (with which conditions of the contract are created) are accompanied by the clear words, there is no reason for priority of words on them and emergence of each one of them which is stronger will have higher priority and principle of priority of the apparent will will clarify its role in difference between the prominent cases of will and external evidence. The question which arises in this stage is to what extent the evidence implication should be not to rely on apparent meaning of the words and if it causes assurance and certainty in case of suspicion or not. Given that assurance and certainty have one decree in legal issues and in case they are considered equally, there is no doubt that we ignore purports of the clear terms in case of certainty about purport of the evidence or evaluate both of them altogether and the clear terms will be prior. Problem will occur when we have suspicion about purport of the evidence which is contrary to purport of the clear terms. When the people though ordinary people conclude a contract pay full attention to the words and terms which they mention so that they can justify loss of the opposing party based on it or give excuse it in their favor and also can stand against justification and excuse of the opposing party. On this basis, if we suspect about evidence which is contrary to appearance of the terms, we should not pay attention to it because customary emergence of the words is qualified for reasoning and confrontation with opposing claim. But if one rely on the customary purports of the words and terms to reach the truth of the matter which is the real intention of the parties, it may be thought that suspicion about the opposing suspicion deprives us of right to rely on the terms because with such suspicion, it is not evident that the words and terms bring us to the real intention of the parties, however, this is possible when the terms have clarity but if we consider the terms with this quality, they will be able to reach the reality and real intention of the parties can be achieved with them even if the evidence which is contrary to purports of the terms is customarily doubtful. Of course, this is acceptable when such evidence doesn't remove clarity from the terms. Based on article 224 of Civil Code which stipulates that words of the contracts bear customary meanings, one should refer to custom to obtain meanings of the contracts words and custom will not give apparent meaning to them but give another meaning to them by reliance on evidence and circumstances. As a result, considering this article, one can extract another meaning from the explicit words of the contract. In the judicial precedent, it has been mentioned that single verdict No. 7471-1615 dated 11 March 1932 stipulates that: only appearance of some words shall not be summarized in recognition of the intention but all interpretations and evidence and the aspects which interfere in understanding of the intention should be considered. Such verdict No. 72/809/3 stipulates that the judge shall seek for common demand of the parties for recognition of legal nature of the contract. The tool which he possesses for this purpose, contents of the contract and explicit cases

of the document text are the words which the parties have applied in preparation of the contract bear customary meanings and finally customary arbitration and circumstances of the case.

### **THE FAVER CONTRACTUS AND INTERPRETATION OF THE CONTRACTS**

In legal meaning, the word interpretation of contract means searching for meaning of contract by utilizing the principles which allow access of the writers of that contract. These principles mean the legal principles one of which is principle of necessity and also the Faver Contractus or principle of good faith in interpretation of a contract. In fact, interpretation means finding implicit meaning in term of a contract. Of course, considering character of its writers and local custom and also transacted conditions at time of concluding that contract, any principle shall be used in interpretation, for example, the Faver Contractus or principle of necessity shall be used only when an interpreter and also judge of the court in the contract which is referred to him have attempted not to determine concept of provisions of a contractual text truly before execution of any interpretive principle in the contract and finally, when this important case is not possible, it can clarify uncertainty from a contract in the best manner based on the evident principles of contractual interpretation. One of these principles is the Faver Contractus which is one of the universal principles and related to behavior of the reasonable people. This principle which we mentioned and studied before in the above juristic discussions is applied in legal systems of other countries such as France and England and in custom of international commercial contracts based on which provisions of the words and terms of a contract can be given meaning not to nullify a contract. Interpretation is one of the negotiable issues and regarded one of the issues in which different legal and sometimes opposing theories have been declared and this field has become highly important in law due to contradictions which originate from different interpretive methods and also due to claim in which issue of contract interpretation is mentioned because there is any probability of negligence and mistake by people at time of interpretation, therefore, awareness with interpretation science and its principles seems to be unavoidable so that issues of interpretation by the courts are discussed whether from the viewpoint of judges about analysis of a verdict relating to interpretation of a contract or from the viewpoint of attorneys of the parties in fulfillment of the attorneys' request for their intended interpretation. It is worth noting that issue of interpretation is discussed when a contract becomes ambiguous in its content and provisions, therefore, the interpreter cannot and shall not have recourse to principles of contractual interpretation or contractual interpretation with clarity of words and explicitness of terms in a contractual obligation and shall not give the meaning to the conditions and words of a contract, which is not intended by the parties. Regarding domain of interpretation which has been expanded in performance of the contract, there is belief that when we suspected about the presence or absence of a contract, interpretation is applicable but what I found in materials of the lawyers shows that doubt about realization of the contract is one of the categories which is not interpreted and it can be said that it is related to description of a contract. Therefore, only when it is specified that the contract to be disputed has been realized, it can be said that when it is time to interpret and clarify ambiguity of that contract, since there should be a contract with which the Faver Contractus can be enforced, it can be said that the Faver Contractus is applied in interpretation of a contract when the interpreter or judge cannot achieve the real and intended concept of the regulator s of that unknown and ambiguous term despite a contract in explanation of the concept of the word, term or condition in the contract with the circumstances and conditions and other evidences. Here, we shall give meaning to that term with the Faver Contractus leading to truth and validity of the contract. This view has been also mentioned in article 224 of Civil Act. Therefore, it seems that in the first stage which is the stage of proving the contract, one may not enforce the Faver Contractus. On the other hand, due to extent of the domain of the Faver Contractus in our Islamic jurisprudence which Civil code has followed, customary realization of a contract shall be established, therefore, a contract should be realized in the external world and then when there is doubt in word or term or conditions, the Faver Contractus will be helpful. Therefore, it should be mentioned that when we doubt about realization and conclusion of a contract, it is unlikely that one can use the Faver Contractus in proving it and the principle cannot be valid until a contract has been concluded externally and customarily. Therefore, we regard a concluded contract in interpretation of a contract when it has external existence. Here, if there is an ambiguity in some provisions, this problem can be solved through interpretation. For this reason, doubt about conclusion of a contract relates to description not interpretation. In fact, description of a



contract beyond category of interpretation means the general word. Dr. Shahidi also regards the term as positive interpretation of contract in principles of contracts and obligations more proper in his writings and also Dr. Katoozian in general rules of contracts in the third volume makes comment on the term “contractual proof “. Finally, contract interpretation is highly important in the stage after description and proof of that contract and it is better to recognize these two cases well. Therefore, it is important to achieve a common intention of the parties in interpretation of a contract. This case which is preferred in interpretation is recognition and explanation of concept and provisions of a contract considering common intention of the contracting parties. Only the interpreter or judge of the court may refer to the interpretive principles which are among the Faver Contractus and take advantage of them in case it is not possible for him to achieve common intention. However, there is no doubt that the Faver Contractus will not be effective in all claims which are created directly or indirectly about mutual consent of the transacting parties because the Faver Contractus will be helpful when a subject has occurred in the external world . For example, an owner leases an automobile; however, another party regards it as sale and purchase, as there is misunderstanding and doubt about type of contract, the principle can be based on validity of the contract because consent of the parties which is basis of any contract is doubtful. Here, type of contract is not specified. One of them is called sale and another one is called lease. With the provided explanations, it becomes evident that one can have recourse to the Faver Contractus when we doubt if the concluded contract possesses a thing which may be prevented or lacks a thing which becomes conditional. Regarding the use of the Faver Contractus in interpretation of contract, one can refer to article 31 of Vienna convention regarding law of treaties where interpretation shall give legal meaning and effect to all conditions of the treaties. An interpreter cannot infer from provisions of the treaty leading to useless conditions and clauses of the treaty or it has been stipulated in law of international commercial contracts enacted in 1994 in article 4-5 that conditions and terms of the contract shall be interpreted such that all of them become effective and the conditions which are interpreted shall not remove effect of some other conditions and terms of the contract. In fact, in case one term or condition was not truly known after investigating all terms and conditions of a contract, we shall regard that ambiguous condition or term bearing correct or valid meaning, therefore, if the contract requires a contrary case, the court shall not give meaning to the contract which is not generally intention of the parties and is contrary to the common intention of the contracting parties. Regarding use of the Faver Contractus in Islamic jurisprudence, most jurists permitted it for a contract of which customary nature has been formed, however, we doubt about its validity but meaningful and non-literal words and terms of a contract are relied in common law and most international documents and conventions. The Faver Contractus is common in juristic meaning and utilization of this principle in interpretation of a contract in law of Iran because its scope of application includes all regulatory and obligatory verdicts and is applied when we make doubt about validity or nullity of an action or obligation, then, we see that jurists regard this principle as opposite of invalidity or nullity at time of interpretation of this principle. Of course, considering customary occurrence of a contract and realization of its essential elements and by making about its individual and partial conditions, they apply the Faver Contractus in its interpretation and they permit the interpreter to observe the Faver Contractus until its invalidity becomes evident. We mentioned before that there is difference in interpretation with the Faver Contractus in their law and our law in common law. As it had the ambiguous words, it gave meaning to that term based on use of the Faver Contractus in its interpretation which was regarded as true and valid and the court should select an interpretation which leads to validity. Therefore, invalidity or validity is not mentioned in foreign law here but meaningfulness or meaninglessness of a term or condition is discussed and the court shall give meaning to the terms or words which doesn't cause its nullity based on strength of the contract and to search for common intention of the parties. Of course, by looking at our law which has juristic origin, some terms such as First speech acts of negligence and also the act bearing validity can be similar to enforcement of the Faver Contractus in law of West and the ambiguous term and condition shall be interpreted in the contract so that it doesn't requires nullity because the contracting parties don't perform invalid and meaningless action. In this regard, one can refer to verse 3 of the Momenoon sura (And who are at risk for blahs).

## CONCLUSION

Considering the presented materials and by mentioning main juristic differences in interpretation of a contract, the following cases can be generally mentioned. When words of the contract have different meanings in custom, the Faver Contractus requires us to give meaning to word or term when the contract is valid and has legal effects, this effect results from enforcement of the Faver Contractus and the validity or invalidity of the contract is mentioned from the customary viewpoint because custom selects a meaning to mention concept of the term or condition which is true and valid because reasonable people judge in such manner and custom originates from view of the reasonable people and people of a region or country has observed it in long term and regarded it as a model because it is unlikely that these people select the meanings which are incorrect. Although the words which they select have ambiguous and sometimes opposing meanings and interpretation of contract relying on the Faver Contractus shall not cause its nullity and invalidity. Therefore, in case terms of a contract give different meanings leading to invalidity and other meanings cause validity and legal effects for a contract, that term shall bear meanings from which effects and results are created. This case is also related to the reasonable people who conclude the valid and true contract which has known and definite effects and results. Therefore, in case we doubt about validity or nullity of a condition or term with the Faver Contractus, we shall regard that term as bearing correct meaning. The former which was mentioned above supervises where there is difference in text of the contract in mentioning concept of the term and this difference results from different attitudes in custom which gives different meanings to it. However, the recent view which was mentioned as result doesn't result from difference and ambiguity but results from that contract. Regarding the interpretation based on the Faver Contractus, a contract shall not be cancelled and when we doubt about some terms and words and don't have strong evidence indicating real concept of those terms or words, it is evident that if a term is ambiguous, this term shall be defined leading to cancellation of the contract. This legal effect is one of the consequential effects of the Faver Contractus. The Faver Contractus mentions general decree against nullity but other effects will be created for example, interpretation of a contract shall not require defect of common intention of the parties. This case causes us to regard the contract as valid and prevents its termination in any manner such as nullity, cancelation, and automatic termination. It doesn't seem that the Faver Contractus seeks for correct meaning against invalidity but this principle seeks for correct meaning against any meaning which leads to invalidity of the contract. In this regard, the Faver Contractus will be helpful. Use of the Faver Contractus in interpretation of contract is generalized to this meaning and many new structures and contracts which are not available in religious law of Islam can be legitimized with this principle and become systematic. Of course, legislator shall determine their verdict and should be legally studied provided that these contracts are not against the religious law and are not contrary to the good nature and public order. Therefore, the principle shall be based on validity of that contract in case of doubt in the concept and consequently, the contract is also valid and in case a term lacks legal meaning, in case there is no evidence, the principle shall be based on validity of that term and the contract shall be regarded as valid. The seller is obliged in one of the paragraphs of the contract to make necessary cooperation with purchaser for drawing up notarial deed. It is true that the term "cooperation" doesn't bear special legal meaning or legal burden and only its effect is helpful. Then, if seller doesn't cooperate for any reason, the purchaser cannot avoid paying the contractual price or rely on lien because the Faver Contractus regards the contract perfect and the court shall interpret the contract such that the term "cooperation" cannot obstruct the contract though it is not invalid, therefore, it cannot be said that having legal effect means no cancelation.

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