



RESEARCH ARTICLE

Ignorant deception responsibility in fiqh and topical law**Mohammad Moharrami**

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In Imamich Fiqh and topical law, deception has been proposed as an one of the effective factors in generate the responsibility and sanction. refer to ignorant assumption if meet the its aspects and conditions. These aspects are include the material and spiritual aspects. Material aspects include the meeting the assumption, tricky behavior, generate the loss and causal relations, on the other hand, spiritual aspects are knowing, purpose and deception. But there is proposed evidence in Imamieh Fiqh for ignorant assumption person's sanction: Destruction precept and no-lose precept and the famous tradition of Islam prophet: «المغرور يرجع الى من غره». For the purpose of use the assumption precept, invent responsibility and artifact the brand of business accredit companies, automobile preclusion companies responsibility about technical deficiency, ignorant assumption in contracts and marriage responsibility to the spouses are researched.

*Copy Right, IJAR, 2016,. All rights reserved***INTRODUCTION**

Human is naturally a social beings and their presences in society for meet their needs depend on their relations with the other persons one form, of relation is bargain or trade. As the trades are one of the bargain contracts, there is the place for deception. Contracts, there is the place for deception.

The Islam universality necessities the tasks and laws of ignorant and deceives. It is evident that in the conduction of contract and trade, the decisive person has responsibility if meet the assumption. In this article we study the responsibility of decisive person that has no knowing about his acts. Among the proposed descriptions, it seems that the descriptions of Aiat Allah Bojnoordi and Taskhiri are complete, because they referred to propose and assumption knowing, that there aren't referred to this topic on the other description.

Aspect precept of assumption:

As the meet of sanction depend on aspects and condition presences, for knowing the responsible person for loss of loses, at firs must be justify the aspects and conditions of that responsibility. Generally and on the basis of one division, The meet of assumption precept conditions are divided to Section: Material and spiritual aspects.

Material aspects: 1- tricky behavior 2: lose 3- Causal relations

It was described that the act of assumption person must be deceive and this tricky act cause the loss of proud persons also the Foqaha believed that must be causal relationship between these acts, that sheikh Ansari

Said that about this topic: it must be causal relations between tricky acts and deception and justify their relations.

Spiritual aspects: 1- knowing 2- Purpose 3- Deception

The knowing to deceptive and proud persons was study between spiritual aspects.

It was presented four types of this aspect according to knowing and knowing and ignorant by deceptive and proud persons and their compilation:

A: Deceptive person knowing about topic and Proud didn't, in this respect the deceptive person is responsible for loses

B: Both of them knowing about matter.

C: The deceptive person is ignorant and proud is knowing about matter.

In BVC, it isn't present the Assumption precept, because the non-knowing of losing is a condition that is necessary for justify the assumption and when he act knowing there is no place for trick and assumption.

D. Both of them are non knowing. In this stare deception was conducted by assumption person ever non knowing, then there is presented the assumption precept.

Aiat Allah Bojnordi believed that there is no difference between justifying the assumptioy precept and the traditions about it, and wrote this matter in "Alqavaed-al- Foqahieh" because he saw the traditions about sanction of doctors that in them the non-knowing of doctor and lose the patient are actual matters and justify them. (Mohammadi, B79, 87). In description of purpose, that is one of the aspects of spiritual condition, we present this

question: "Is purpose for deception necessary for justify and meet the assumption?"

The answer is that "the purpose for acts isn't the actual condition for these matters." (Mohammadi, 1379. 88).

When, one person beat the other, as have purpose or not, there isn't include the beat matter, i.e. in tradition we say that person A was beaten the person B, and in this sentence the purpose of person didn't mention.

It is noted that in this answer, all acts didn't include the purpose topics, such as lose to other cause the civil responsibility and sanction.

But the purpose isn't necessary i.e. if one person cause to lose another one, is responsible, if had purpose or not. But acts such as respect with purpose of respect to others is the matter of respect, but this topics isn't the scope of our attentions.

the third aspect of lose precept is deception that has direct relationship with meeting this percept. Deception is the spiritual and mental state that the proud acts other works (sofari, 1377, 89). Actually, it must be the person was deceptive that said this precept. The study of the evidence of the sanction of

assumption person: With meeting the proud, the sanction of assumption person is indisputable Because this sanction obtained from the result of deception and trick. /Now, study the reasons of evidences and justify them:

A: lose precept:

In these affairs, assumption person cause the loss and proud is the actor of lose. In this matter the evidence show the sanction of assumption person.

It must be noted the sentence to the sanction of proud is said when this person isn't child, silly or execrable. Then when a person has these conditions, the sanction sentence become disqualify.

B: non lose precept:

The basis of sanction of assumption person is that his (her) act cause the lose to another and as the loser is responsible to redress and because that act cause the lose, it was said that the sanction of this person is in disputable.

C: tradition of prophet:

Documental argument: This tradition of prophet didn't mention in "Ahadith and Foqaha books, But this tradition is accredited. (Taskhir. 1925, 232).

Reasonable argument: The Phrase of the necessities of the redress show the sanction of assumption person, then this tradition refer to the redress the loses. Comparison of assumption precept in some of the contracts: The responsibility of invent and artifice of commercial companies.

Brands: In article 529 of Islamic punishment act it was mentioned that: Every person invent the brands of public companies and know that, in addition to the redress the loses, was sentence to 3 months to 2 years imprison.

According to this article, as one production group invent a product with a brand of famous company, that cause the deception of customers and this customer sells this product to another person, the assumption precept was study:

The third party seem to be deceptive, because he was decisive and meet the assumption, the seller is ignorant or non-knowing person because (she didn't know about the in rent of brand.

According to assumption precept, assumption person can refer to non-knowing proud. But as this person didn't know the fact, then production group is responsible for redress and the seller.

Has the same sentence to the buyer.

The responsibility of automobile or vehicle production companies versus the technical deficiency:

According to compulsory insurance act passed in 1397 all of the owners of automobiles and train tools, subjective or objective, are responsible for body and financial loses that cause to third party with mentioned transport tools (katuzian 1385, 139).

But according to assumption precept, the owners of transportation tools are responsible when there is bot assumption. But it seems (s/he Owen is decisive as a result of the deception of automobile producing company and this company is the responsible for redress.

The seller of automobile can litigate to receive the redress to the producing company. In the end, it is necessary to said that although the seller of automobile is as sump-lion person, but because the accident cause the technical deficiency, then none of them are not responsible and two driver must respect to laws. In Articles 337 and 366 of Islamic punishment laws mentioned this matter.

The unknowing deception in the trade of farms:

If a person sold a farm to another person with a contract of this type of trade and mentioned farm has been lose without the offense of buyer, it is consider that the farm didn't belong to seller and (she didn't know anything about it i.e. unknowing deception. In this state the customer is assumption person. No it was consider that the owner know about this matter and demand to return his (her) farm. It is must be mentioned that the buyer cultivate at that farm and obtained the production.

Now, we study the assumption aspects and responsibility:

As mentioned, the seller is the unknowing decisive and the buyer is deceive. The main owner can demand to return the financial lose from both of them. If (s)he refer to buyer, the buyer refer to seller according to «المغرور يرجع الى من غره»

Precept, although the Owen buyer have sanction to the owner, but finally the sanction is to the seller, because his (her) act is in con trust to honesty, not sanction (safari 77, 202).

But the production belong to the owner of seeds and buyer can refer to seller for this matter.

The responsibility of parents or the broker of marriage on the taints of spouse.

If a person married a woman to a man and hide her taints or didn't say anything in the marriage ceremony, form some states.

A: If the man know about that taint, exclude the deception argument, because he knows.

B: Parent or the broker of marriage didn't know about her taint, in this situation is dissension some of foqaha didn't believed that this unknowing or doubt cause the obviation of responsibility and some of them believed that knowing is the basis of recognition.

C: The woman owen act the deception, in this situation the spouse has the right of return the woman and the woman is responsible.

Conclusion:

It has been concluded that the decisive person is responsible, knowing or not because (s)the act the tricky behavior and as a result the precepts of deception aspects was met and this acts cause the sanction and (s)he must redress the loses of the loser person, this conclusion obtained from the study of deception precepts. That include the lose precept, Non lose precept and the prophet tradition.

«المغرور يرجع الى من غره»

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