ISSLP
Interdisciplinary Studies in Society, Law and Politics

Original Research

A Comparative Study of the Legal Effects of Trust with Deposit and Loan in the Legal Systems of Iran, France, and England

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Received: 2024-02-29 **Revised:** 2024-05-03 **Accepted:** 2024-05-09 **Published:** 2024-05-16

One of the contracts commonly used in various forms in society today is the contract of deposit. The Civil Code, from Article 607 onwards, defines this contract and explains its rulings and effects. Similarly, the concept of trust (Trust) is one of the fundamental and widely used concepts in the legal systems of countries like the United States and England, which are influenced by their legal system. In this institution, the owner, by relinquishing their ownership rights, subjects it to a trust and transfers their legal ownership rights to a person called the trustee. Loan, in the jurisprudence and law of Iran, refers to a revocable contract by which one party permits the other party to use the property without compensation for a specified period. Therefore, the author, in this article, compares the legal effects of trust with deposit and loan in the legal systems of Iran, England, and France in a descriptive-analytical manner. The results indicate that, according to English law and the resulting interpretations, trust is not considered a contract and can somewhat be categorized under agreements. Trust cannot be regarded as a real contract in the sense commonly used in Iranian law.

Keywords: *Trust, Deposit, Loan, Iranian Law, French Law, English Law*

How to cite this article:

Sabetipour, B., Sabahi, M., Hashemi Bajgani, S. J., & Salari, Y. (2024). A Comparative Study of the Legal Effects of Trust with Deposit and Loan in the Legal Systems of Iran, France, and England. *Interdisciplinary Studies in Society, Law, and Politics, 3*(2), 128-139. https://doi.org/10.61838/kman.isslp.3.2.15

1. Introduction

One of the duties of every jurist is to strive for the advancement of their country's legal system to ensure the execution and expansion of social justice, and to distinguish sound rulings from misconceptions based on solid and precise legal principles. They must also clarify the proper channels for the implementation of laws for the public (Jing, 2022).

One of the most important and widely used legal practices today is the contract of deposit, a contract that, despite its widespread use in society, remains so neglected and inaccessible that only a few people outside the legal profession are familiar with the term "deposit." Most of the definitions heard from the general public either align with a lease or a loan (Pour Esmaeili & Barzoui, 2019).

One of the reasons for the public's lack of awareness of the deposit contract is its insufficient application by lawyers. Occasionally, some jurists briefly and comprehensively examine this contract, and their superficial opinions, without attention to the nuances of this legal institution, fail to contribute to the discovery and extraction of its governing principles. Instead, they

abandon their disorganized notes and begin explaining another contract altogether (Tang, 2023).

The author, considering the definitions observed in this contract and the numerous ambiguities it presents to themselves and others, has attempted, albeit minimally, to organize the rules and principles governing the contracts of deposit and loan. Additionally, they aim to address questions that are often left unanswered or are answered in a vague and inadequate manner. The author has approached these ambiguities from various perspectives and has documented what seemed logical.

In discussing the nature of the contract of deposit, the focus has been on issues that have sparked disagreements among jurists and Imami jurisprudence scholars. For example, some jurists, based on their definitions of permission, categorize certain contracts, including deposit, as contracts based on permission. However, given that the contract of deposit, based on these definitions, does not fall under the category of permissive contracts, the author has meticulously examined and redefined each key term in their definitions. Ultimately, the author concludes that, contrary to the opinions of some jurists who consider the deposit a permissive and non-binding contract—and even some who classify it as a real contract—the deposit is not a permissive contract. Rather, like any contract, it involves obligations, and thus it cannot be classified as a real contract simply because its obligations are to be fulfilled after the property is handed over to the trustee.

Another controversial topic discussed in this article is the comparison of the deposit contract with the legal institution of trust in the English legal system. Despite the lack of sources on this subject, after studying the concept of trust, the author concludes that these two legal institutions have no similarities and, in some aspects, even have fundamental differences, which have been proven in this article.

It should be noted that the author's primary goal was to address the questions and ambiguities surrounding the contracts of deposit and loan and to compare them with the trust. Therefore, the sources and references used in this article are mostly cited as supporting evidence for the author's statements or briefly mentioned for criticism. As a result, detailed discussions of their opinions have been avoided to prevent the text from becoming excessively lengthy and to avoid unnecessary repetition.

2. Conceptualization of Deposit

According to Article 607 of the Civil Code, a deposit is a contract whereby a person entrusts their property to another to be kept free of charge. Based on the aforementioned definition:

Firstly, a deposit is a contract.

Secondly, the subject of the deposit must be property (with value).

Thirdly, since the term "person" is used in this article, it appears that legal entities cannot be parties to a deposit contract.

Fourthly, with the phrase stating that a person entrusts their property to another, it seems that the legislator considers the entrustment of the property in safekeeping as one of the essential elements of the deposit contract.

Fifthly, the depositor must own the property being deposited.

Sixthly, a deposit is a free-of-charge contract.

These points are conclusions derived from the text of Article 607 of the Civil Code. However, while some of these conclusions are accurate, others are merely incorrect interpretations of the article's text. By examining other articles of the Civil Code and the governing legal principles, it becomes easy to distinguish the correct conclusions from the erroneous ones and to identify the shortcomings in this article, which should be addressed.

In order to respond to the objections raised regarding the deposit contract and ultimately arrive at a comprehensive and precise definition of the deposit contract, we will critique and analyze Article 607 and the conclusions mentioned above to better reveal the true nature of the deposit contract.

2.1. The Deposit is a Contract.

One of the conclusions mentioned above is that the deposit is a contract and, as a result, must adhere to the essential conditions for the validity of transactions (Article 190 of the Civil Code) and other mandatory rules related to contracts. Some, however, question whether the deposit is even a contract at all. This issue will be discussed in detail in the section on the characteristics of the deposit contract, and reasons supporting the notion that the deposit is indeed a contract will be provided. For now, it is sufficient to say that one of the most important reasons for considering the deposit a contract is, firstly,

its inclusion among the named contracts in the Civil Code, and secondly, the clear wording of the article strongly suggests that the deposit is a contract.

2.2. *The Subject of the Deposit Must Be Property (with Value).*

Another conclusion drawn from Article 607 is that the subject of the deposit must be property. The question then arises: can something that is not considered property be the subject of a deposit contract? Some of our jurists, in explaining Article 215 of the Civil Code, have answered this question. The clear definition of property is that it is something that has economic value, and this is a well-known concept. Transactions involving items that have no value, whether due to their trivial nature, such as cockroaches or flies, or because of their insignificance, such as a grain of rice, or because they are abundant, like air, are void (Pour Esmaeili & Barzoui, 2019).

Thus, by analyzing the concept of value, it becomes clear that two elements are essential for something to be considered property: it must be useful, and it must be limited in supply or existence. Anything that is not useful cannot have value.

If air is traded while it is freely available, such a transaction would be void due to the lack of ownership over the subject matter. Property can also be divided into two types: tangible property, such as houses or cars, and the rights associated with them; and intellectual property, such as scientific and artistic works and the rights related to them, which are protected under the Law on Protection of Authors' Rights, passed in January 1969, and the Invention Law of July 1931 (Katoozian, 2011).

However, environmental conditions and individual and social circumstances, with their various complexities, have turned the concept of value into something relative. In fact, this relativity arises from the relativity of the two essential elements of wealth—usefulness and scarcity. Something may be useful to a person under specific conditions, but not useful to others or under normal circumstances. For example, an old, faded, unique photograph of a deceased person may have psychological and emotional value for their only child or grandchild, but it may hold no value for anyone else. Similarly, an object may be abundant and unlimited in one environment but rare and limited in another. For instance, air is abundant in the Earth's atmosphere, while under the sea, it is scarce and limited.

When an old photograph is sold to the child or grandchild of its owner, the transaction should be considered valid from the perspective of the ownership of the subject matter. Likewise, when, for example, a diver's air tank becomes empty due to a technical malfunction in the depths of the ocean, and the tank holder asks their companion for some compressed air from their tank, assuming that the tank contains regular air, this transaction would not be invalid due to the air's lack of value. While air is abundant and typically has no value in the Earth's atmosphere, it is limited and valuable in the depths of the sea (Issaie Tafreshi, 2004).

It can be said that the term "property" in Article 617 of the Civil Code emphasizes the rule in Article 215 of the Civil Code. Therefore, anything that has economic value or holds value for the depositor and trustee can be the subject of a deposit contract. It is important to note that this value must be reasonable and logical; otherwise, contrary to Article 215 of the Civil Code, parties could easily agree on a definition, rendering all the definitions and explanations regarding the term "property" in the aforementioned articles redundant and unnecessary.

2.3. *Legal Entities Cannot Be Parties to the Contract of Deposit*

Another conclusion derived from the definition of the deposit in Article 617 of the Civil Code is that legal entities cannot be parties to the contract of deposit because the article only refers to individuals, which exclusively includes natural persons. Considering the significant role that legal entities, such as banks, various companies, and governmental institutions, play today, it would have been preferable for the legislator to use the term "person" instead of "individual." However, according to Article 588 of the Civil Code, which states, "A legal person may acquire all the rights and obligations that the law grants to individuals, except for those rights and duties that are inherently human, such as paternal rights and similar ones," the flaw in this article is remedied (Boroujerdi Abdeh, 2001).

2.4. *Entrusting the Property to the Trustee as a Pillar of the Contract of Deposit*

A major point of contention regarding the contract of deposit arises from the part of the article where the

legislator defines the contract of deposit by stating that "one person entrusts their property to another." This has led some jurists to classify the deposit as a real contract, where possession is a condition of its validity, while others reject this view, considering the classification of the deposit as a real contract to be nothing but a misconception (Bayat & Bayat, 2015).

2.5. *The Depositor Must Be the Owner of the Deposited Property*

The fifth conclusion derived from the definition of the contract of deposit in Article 607 of the Civil Code is that the depositor must be the owner of the deposited property. However, this issue is resolved by the existence of Article 609 of the Civil Code, which states, "Anyone who is the owner, or a representative of the owner, or is expressly or implicitly authorized by the owner, may deposit the property."

2.6. *The Contract of Deposit Is Gratuitous*

The final conclusion drawn from the definition of the contract of deposit is its gratuitous nature. The explanation is that, unlike the Imami jurists, who did not include the gratuitous nature in the definition of the contract of deposit, the Civil Code introduces it in the latter part of Article 607. This has led to the question of whether a deposit contract with compensation is valid or not.

French law, in Article 1927, first provides a general rule (considering the essence of the deposit as a gratuitous contract and a friendly service), and then, in Article 1928, it specifies the exceptional cases.

According to Article 1927 of the French Civil Code: "The trustee must take the same care in preserving the property as they would with their own property."

Some believe that this stipulation in Article 607 is not mandatory, and therefore, it can be agreed otherwise. However, with careful consideration of the current laws and the governing principles, the fallacy of this view can be easily demonstrated. Nevertheless, since the gratuitous nature of the deposit contract will be examined in the discussion on the inherent nature of the deposit contract, further analysis is deferred (Emami, 2011).

2.7. *Proposed Definition*

To avoid the above-mentioned ambiguities and flaws in the definition of the contract of deposit, it would be better to define it as follows: "A deposit is a contract in which a person (the depositor) entrusts another with a valuable object to be safeguarded without charge."

Other proposed definitions of the contract of deposit include: "A deposit is a contract by which one person is appointed to guard another's property free of charge." However, this definition does not seem comprehensive, as it does not mention the concept of trust and custodianship and is also overly inclusive, encompassing other agency contracts as well.

3. Definitions of Loan

In linguistic terms, a loan is something that one person borrows from another for temporary use and returns afterward, provided it is exchangeable.

In legal terminology, a loan is a revocable contract whereby one party allows the other to use their property for free, provided that the property does not perish (Article 635 of the Civil Code).

The person giving the loan is called the "lender" (mu'ir), and the person receiving the loan is called the "borrower" (musta'ir). Therefore, anything that is consumed with use cannot be the subject of a loan contract. For instance, a car can be lent, but consumable food items cannot.

Since a loan is considered a contract, the contracting parties must meet the conditions of validity specified in Article 190 of the Civil Code. Given its revocable nature, either party may terminate the contract at any time, and the contract is dissolved upon the death or incapacity of either party.

Although both loan and deposit are trust-based contracts, deposit is inherently based on trust, whereas loan is trust-based by extension. In a deposit, the main purpose is safekeeping, while in a loan, the primary intent is the use of the property.

Article 1874 of the French Civil Code distinguishes only two types of loans: (1) loan for use, and (2) loan for consumption or loan contract. Book III of the Civil Code, Articles 1874 to 1914, is devoted to the loan. While Articles 1875 to 1891 deal with the loan for use, the loan for consumption is addressed in Articles 1894 to 1904, and interest-bearing loans are covered in Articles 1905

to 1914, as this last type represents a specific case of a loan for consumption. Articles 1909 to 1914 deal with interest.

In classical doctrine, the loan was considered a real contract, meaning it was a contract that only arose from the performance of one party's obligation, which is the transfer of property. Although the concept of a real contract is not present in the categorization of Articles 1101 onwards of the Civil Code, the authors of the Civil Code were highly interested in this concept. The existence of a real contract relies on two constitutive elements: (1) an obligation to return cannot be imagined as binding on someone who has not received the property, and (2) Article 1875 of the Civil Code defines the loan for use as a contract whereby one party delivers property to another.

Undoubtedly, before the property is transferred, obligations arise during the exchange of consent. According to proponents of this view, a pre-contract exists here, which differs from a true contract.

The definition of the loan contract is provided in Article 635 of the Civil Code. This article considers the loan as a contract or agreement. Therefore, for drafting the text of this agreement, all principles and conditions for the validity of contracts must be considered.

Additionally, Article 635 of the Civil Code states that, by virtue of the loan contract, one person allows another to benefit from the use of their property free of charge, meaning that the borrower benefits from the property and temporarily uses its advantages.

According to Article 637: "Anything that can be utilized without being consumed can be the subject of a loan contract. The benefit derived from the loan must be lawful and reasonable." The lender and borrower must possess the capacity to enter into the contract, which includes having adequate intellect, maturity, and discernment. If either party lacks capacity, the loan contract is void.

If the borrower lacks capacity, for example, if they are a minor without discernment or are mentally incompetent, the loan contract is void, and there is no responsibility or liability on their part because the lender willingly took the risk of harm by giving them the property. However, if the borrower is a minor with discernment or a spendthrift, they must return the borrowed property to the owner. Otherwise, they are liable because responsibility is not waived by the possession of discernment and intellect.

In cases where the lender lacks capacity, the loan contract is deemed void, and the property in the borrower's possession is considered legal trust. The borrower must return the property to the guardian or custodian managing the lender’s affairs. If the borrower has already utilized the benefit of the property, they must pay the necessary costs. Failing to return the property places the borrower in the position of a usurper, responsible for compensating for any damages or defects to the property until it is returned, even if they did not derive any benefit from it. If the property was borrowed as a loan, the borrower is considered a usurper, as they do not have the right to dispose of their own property.

The loan contract, in addition to its specific conditions, must also adhere to the essential conditions for the validity of transactions mentioned in Article 190 of the Civil Code:

1. The intention and consent of the parties.
2. The capacity of the parties (maturity, intellect, and discernment).
3. A specific subject matter.
4. A lawful purpose for the transaction.

For a loan to be properly executed, the subject of the loan must meet the following conditions:

1- The benefit of the loan must be clear and definite

According to Article 190 of the Civil Code, the subject of the contract must be specified. This is a general rule for all contracts; however, in a loan based on goodwill and concession, the ability to specify and general knowledge is sufficient.

The loan contract is one of the broader meanings of transactions. Therefore, if the subject of the loan provides a unique benefit, such as spreading a carpet or using a chair for sitting, specifying the intended benefit is not necessary in the loan agreement.

However, when the loaned item provides multiple benefits, such as a unique handwritten manuscript that can be read, copied, or photographed, or land that can be used for farming, planting trees, or constructing a building, if the lender specifically intends for one of these benefits, it must be stated in the contract.

If the lender does not intend for a specific benefit and all benefits are equally valid to them, allowing the multiple uses of the loaned property, then it can be loaned. In such

cases, the borrower may benefit from any of the uses of the loaned property, but they cannot utilize a rare or unusual benefit unless it is specified in the contract, as it was neither intended by nor permitted by the lender. Therefore, if the rare benefit of the loaned property is intended, it must be explicitly stated in the contract.

2- The benefit of the loan must be rational and lawful

This condition is also part of the general rules. According to Article 215 of the Civil Code, "The subject of the contract must have value and provide a rational and lawful benefit."

In a loan, like in a lease or usufruct, the actual benefit is the subject of the contract. Therefore, the benefit under the loan contract must be both rational and lawful. A single item may provide several benefits, some of which are lawful and others not.

3- The subject of the loan must remain intact while benefiting from it

As stated in Article 637 of the Civil Code: "Anything from which one can benefit without consuming its essence may be the subject of a loan contract." Thus, food cannot be loaned for consumption, but it can be loaned for display in a store.

4. Definitions of Trust in the English Legal System

Due to the various applications and ambiguities surrounding this legal institution, English jurists have provided different definitions of trust. Below are some of them.

For instance, Professor Keeton defines trust as follows: "A trust is a relationship whereby the owner (settlor) retains ownership of their property for the benefit of certain individuals, which may include themselves, or for purposes recognized by law. In such cases, the real beneficiaries of the property are the beneficiaries or other persons with an interest, not the trustees" (Tang, 2023).

Other jurists have also provided various definitions of trust, which are discussed below.

Trust is an equitable obligation that requires a person called a trustee to manage property under their control, known as trust property, for the benefit of individuals (beneficiaries) or a class of individuals, which may include the trustee themselves. Any act or omission by the trustee that violates the terms of the trust document is referred to as a breach of trust (Jing, 2022).

When owners transfer their property and ownership to trustees to be managed for the benefit of the original owners, a business trust may exist. Some courts follow the legal principles of trusts to determine the rights and obligations of the parties in business affairs (Matthews, 2013).

Scott notes that even if it is possible to provide an accurate definition of the legal concept of a trust, such a definition would have little practical value. A correct definition cannot serve as a fundamental introduction from which laws governing conduct and action can be derived. Our legal system (referring to English law) has not developed in this way. If the rules and laws were chosen from other sources, a definition of the concept of trust might be made. However, our definitions arise from the rules, not the other way around. All that can be done is to offer a definition of the legal concept of trust to give people a general understanding of the speaker's intent. Principles can be stated that distinguish the characteristics of this concept so that others can reach a general understanding of what the author has in mind (Tensmeyer, 2015).

According to this view, those tasked with reviewing and redefining trusts have offered the following detailed definition of trust: Trust is the management of property for the benefit of others, and it is a relationship that arises from the declaration of intent to create it.

The following characteristics must be mentioned in the above definition:

1- Trust is a legal relationship.

2- This relationship has financial and monetary characteristics.

3- This relationship concerns property and is not limited to personal obligations.

4- It involves equitable duties imposed on the person holding the legal title to manage the property for the benefit of another.

5- Trust arises from the expression of intent to create this relationship.

The combination of these characteristics defines the concept of trust as it has developed in Anglo-Saxon law (Horwitz, 2001).

From the definitions of the contracts of deposit and loan, it is clear that there are fundamental differences between deposit and trust, and they essentially have no connection. While a deposit is a contract formed solely for the safekeeping of property with no financial motive,

a trust is a contract primarily established for financial or material purposes. In a deposit, the custodian generally does not acquire any rights over the property, whereas in a trust, the trustee, who may be called a "fiduciary" due to the similar responsibilities they hold towards the beneficiaries, is the actual legal owner of the trust property, responsible for managing it for the benefit of the beneficiaries of the trust. Additional differences will be discussed in subsequent sections.

In English law, trust holds a special position because its applications are so extensive that, compared to Iranian law, it encompasses institutions like endowment (waqf) as well as wills, agency, and other arrangements. Due to the wide range of its applications, it can play an important role in the legal relationships between individuals. One jurist argues that whenever property is held by someone other than its absolute owner, it is typically held under the title of trust (Jany, 2004).

Thus, trust is a type of contract that shares characteristics with fiduciary contracts like wills and agency, as well as with ownership contracts like sale and donation. Therefore, it cannot be confined to a specific category, nor can it be compared with fiduciary contracts in a general or specific sense. As some jurists have stated, trust must be understood only as a trust and nothing else. In our legal system, trust most closely resembles public and private waqf (endowment), but it still cannot be fully equated with waqf because it has features that prevent it from being classified as such. For example, in waqf, the trustee (mutawalli) only has the right to manage the property to the extent of the authority granted to them, whereas in a trust, the trustee is considered the actual legal owner of the trust property, managing it for the benefit of the beneficiaries designated by the owner (settlor).

5. Is Trust Considered a Contract?

Trust and contract in English law are two completely different concepts. A contract is a concept found in common law, based on the agreement of the parties and requiring consideration, creating personal rights for one party against the other. However, trust is a concept grounded in equity, primarily based on the intent of the owner, and it creates a form of proprietary right for the beneficiaries.

In French law, a contract is defined as an agreement between two or more wills on a specified legal matter, and in reality, it is a specific type of agreement. Thus, every contract is an agreement, but not every agreement is a contract.

Therefore, based on the explanation provided above, trust cannot be classified as a contract according to the definition of a contract in English law. Compared to the legal system of Iran, since every contract requires the agreement of two wills, trust cannot be considered a contract in Iranian law either; rather, it aligns more closely with the definition of a unilateral legal act (iqa').

5.1. The Status of Trust: Contractual or Non-Contractual

Regarding whether trust is contractual or non-contractual, no specific mention of this topic is found in the available sources, particularly with the definition of contractual obligations provided earlier. However, after the formalities of transferring ownership are completed, the owner's relationship with the trust property is severed, similar to the relationship between the settlor and endowed property in Iranian law. It seems that after completing the necessary formalities, the obligations outlined in the trust become binding. As a result, trust cannot be classified as a real contract, as understood in Iranian law.

5.2. The Consensual Nature of the Contracts of Deposit and Loan

The concept of real contracts has penetrated from Roman law into modern law. It refers to a contract where the mere fulfillment of two elements—obligation and agreement—is insufficient; the presence of a third element, delivery (possession), is also necessary for its formation. Therefore, in real contracts, possession is a condition for the formation or, at the very least, the completion of the contract. An example of this is a contract that establishes usufruct rights, similar to contracts such as endowment (waqf), pledge, and others. Article 607 of the Civil Code, which defines deposit, states that "one person entrusts their property to another." This wording has led some to believe that deposit is a real contract, meaning that the contract of deposit takes effect upon the delivery of the property to the custodian. On the other hand, the belief that the parties' obligations toward each other arise from the moment of delivery further strengthens the idea that the contract of deposit is a real contract. This is because,

until the property is delivered to the trustee, the trustee has nothing to safeguard, nor is there any depositor to commit to the costs of managing the property.

However, it is conceivable to dismiss the notion of deposit as a real contract and not rely on the wording of Article 607 of the Civil Code. This is evident from the content of Article 191 of the Civil Code, which stipulates that "a contract is formed based on the intent to create obligations." Moreover, by examining the conditions for the formation of various contracts in the Civil Code, it becomes clear that the general principle in our legal system is that contracts are consensual. Wherever possession is a condition for the validity and formation of the contract—such as in pledge (Article 772 of the Civil Code), endowment (Article 59 of the Civil Code), and usufruct (Article 47 of the Civil Code)—it is explicitly provided by law. Therefore, if possession were a condition for the formation of a deposit contract, the law should have explicitly stated its effect, and the silence of the legislator indicates a return to the principle of mutual consent. The delivery of property is not capable of generating the effect of a contract.

The provisions of Article 607 alone cannot override the fundamental principles of deposit. This is confirmed by the legal text governing real contracts, where consensual contracts are indisputable, such as in lease (Article 518 of the Civil Code) and in partnership (Article 546 of the Civil Code). Furthermore, in loans, which are similar to deposits in terms of the obligations of the parties after delivery, the law's definition does not imply any effect of delivery on the formation of the contract (Article 635 of the Civil Code). Historical precedents of Article 607 of the Civil Code also support this conclusion, as in Imami jurisprudence, possession has no effect on the formation or binding nature of a deposit contract (Barikloo, 2015).

Secondly, based on the explanations provided about the contractual nature of deposit, it is clear that under Article 191 of the Civil Code, the deposit contract is formed upon mutual consent and the declaration of intent by the parties, and it creates obligations for them. Moreover, it was explained that comparing the deposit contract before delivery to a conditional sale is incorrect, as a conditional sale, under Article 189 of the Civil Code, is defined as: "A contract whose effect depends on the occurrence of another event." In contrast, the parties to a deposit contract never intend to suspend the effects of the contract at the time of its formation, whereas in a conditional sale, the effect of the contract depends on the intention of the parties. Additionally, once the obligations arising from the contract are established, it cannot be said that the obligations of the deposit are conditional upon the delivery of the property to the trustee. If this were the case, possession would have to be considered a condition for the validity of the deposit contract, making it a real contract, which contradicts the idea that the deposit is a consensual contract.

It appears that, aside from the wording of Article 607 of the Civil Code, another factor reinforcing the belief that the deposit is a real contract It appears that, aside from the wording of Article 607 of the Civil Code, another factor reinforcing the belief that the deposit is a real contract is the effect that the delivery of the property to the custodian (trustee) has. This effect is to actualize the obligations that arise from the deposit contract. As previously mentioned, what is necessary for considering the deposit a binding contract is the existence of potential obligations. However, for these potential obligations to be realized, another action is required, which is referred to as possession or delivery. In other words, the obligations arising from the deposit contract are like seeds that require rain to germinate, and in this context, delivery plays the role of rain. The crucial role that delivery plays in the deposit contract has led to the misconception that deposit might be a real contract. However, it is important to note that although delivery has a vital impact on the deposit contract, this impact is not a creative effect but rather a sustaining one. In other words, the cause of the deposit contract is the mutual consent of the parties, not the delivery of the property to the custodian, much like how rain helps seeds grow but does not create them. Therefore, the deposit is a consensual contract, and once the depositor and trustee agree and the contract is accepted, the deposit contract is formed, and delivery is not a condition for the validity or formation of the contract (Rah Peyk, 2016).

Nevertheless, since written evidence is necessary to prove the existence of a deposit contract, the deposit contract may, in some respects, resemble formal contracts. However, because the law does not require any specific formality or particular procedure for its formation, it cannot be classified as a formal contract. One jurist explains that the deposit contract, in terms of proof, follows the general rules of evidence. Previously, Article 1306 of the Civil Code stated that testimony was

not admissible for contracts and unilateral legal acts, but in the amendments made by the Judicial Commission of the Parliament on March 3, 1983, Articles 1306 to 1311 of the Civil Code, except for Article 1309, were repealed. The purpose of the Judicial Commission in repealing these articles was to eliminate the limitations on the admissibility of witness testimony that had been previously established in those provisions, allowing contracts and unilateral legal acts to be proven without the need for written documentation. However, the Commission did not refer to the Law of Evidence enacted on July 21, 1929, which seems to remain in effect. According to Article 1 of this law, no contract, unilateral legal act, or obligation can be proven solely by oral testimony or a witness affidavit, except in cases where the law provides otherwise. However, this rule does not prevent courts from considering witness testimony to uncover the truth and gain further insight into the case (Nikvand, 2014).

Therefore, in ordinary circumstances, written documentation is required to prove a deposit contract, and anyone claiming to have deposited something with another person must present written proof of this. Only in cases of emergency deposits is the requirement for written proof waived. An emergency deposit refers to situations in which the owner, due to unforeseen events such as fire, flood, or other similar incidents, is compelled to entrust their property to someone else, and obtaining written proof in such cases is generally not feasible. Article 1312 of the Civil Code, which remains in effect after recent amendments, exempts the requirement for documentation in cases of emergency deposits. Clause 2 of this article states: "In cases where obtaining documentation is not possible due to an accident, such as fire, flood, earthquake, or shipwreck, and a person is compelled to entrust their property to another, and obtaining written proof is not feasible."

The provisions in Article 1312 of the Civil Code constitute exceptions to the general rule in Article 1306 of the Civil Code, and with the repeal of the general rule, it is unclear why the Judicial Commission retained these exceptions. Therefore, from these legal provisions, it is inferred that in other cases, the depositor must provide written evidence of having deposited their property. This is particularly true in the case of public warehouses, where the receipt plays a significant role in establishing ownership of the goods and serves as proof of ownership and deposit. This illustrates the general trend toward requiring written documentation for deposits. The French Civil Code also requires the preparation of a written document for deposits, exempting only emergency deposits from this requirement (Katoozian, 2011).

However, another jurist argues that the repeal of Article 1306 before the 1983 amendments means that there are now no barriers to accepting all forms of evidence. It should also be noted that in many cases, it is customary not to obtain written proof when making a deposit or entrusting property to a custodian. For example, no one receives a written receipt when leaving their coat or hat at a restaurant, nor do individuals prepare documentation when entrusting a friend's valuable item to a trusted relative. Therefore, if proof of all these relationships were contingent upon presenting written documentation, trust would be undermined, and public confidence would be eroded.

Given these realities, aside from emergency cases such as fire, flood, or earthquake where obtaining written proof is impossible, the Civil Code addresses situations where obtaining written documentation for a deposit is not customary. As stated in Clause 3 of Article 1312 of the Civil Code and listed among the exceptions: "In regard to all obligations for which obtaining written documentation is not customarily practiced, such as goods entrusted in inns, coffee houses, caravanserais, or exhibitions," the judge may deduce further examples of this principle based on customs and practices.

Even if written documentation were required to prove a deposit, this would not necessarily mean that the deposit is a formal contract. What matters in distinguishing consensual contracts is the conditions of the contract itself, not the formality of proof. If the contract cannot be proven by any means, it remains consensual. According to Clause 2 of Article 47 of the Registration of Deeds and Real Estate Law, a letter is accepted as proof in court if it is formally registered, but these contracts should not be classified as formal contracts. A contract is formed by mutual consent, and even if proven by other means, such as an acknowledgment of obligation, it retains all the effects of a valid and complete contract. Additionally, although intent must be expressed in formal proceedings, private and informal expressions can still be admitted in court (Madani, 2013).

In summary, although written documentation is often necessary to prove the existence of a deposit contract, especially in public contexts like warehouses, this requirement does not make the contract a formal one. A deposit is a consensual contract, and its formation depends on mutual consent, not the delivery of the property or the existence of a formal written document. The essential element is the agreement between the parties, and if that agreement can be established by any means, the contract remains valid.

5.3. *The Status of Trust in Terms of Consensual and Formal Nature*

In comparison to deposit in Iranian law, which is concluded solely by the mutual consent of the parties, trust has specific conditions and formalities and requires the completion of all stages of property transfer. The arrangements and formalities for transferring ownership of any type of property in a trust are the same as those required for transferring ownership of that property under normal conditions. Therefore, the transfer of land must be carried out through the preparation of an official document, and the transfer of ownership of a promissory note or check must be done via endorsement by the transferor. As such, trust is a formal contract, with its formalities depending on the type of property being transferred.

Even one of the most important conditions for the formation of a trust is its declaration, such that without a declaration by the settlor, the trust does not materialize. The declaration must also be made through a written document and be verified by reliable individuals. No material was found regarding the role of possession in the formation of a trust, but given the emphasis on completing the formalities related to the transfer of trust property, it seems that the delivery of property to the trustee does not affect the creation of the trust. Otherwise, at the very least, it would have been mentioned.

5.4. *The Revocability of the Deposit Contract*

Article 186 of the Civil Code defines a revocable contract, explaining that a revocable contract is one that either party may terminate at any time. Therefore, breaking a revocable contract does not require a specific reason, and either party can annul it whenever they wish. For instance, after the completion of an agency contract, the agent can resign, and the principal has the right to dismiss the agent, even without a justifiable reason.

As stated in Article 679 of the Civil Code regarding agency, "The principal may dismiss the agent whenever they wish, unless the agent's appointment or the inability to dismiss them is stipulated in a binding contract." This principle, which aligns with the rule of "freedom of will," can also be extended to other revocable contracts. From this analogy, one can conclude that revocable contracts become binding in the following cases (Mohaghegh Damad, 2011).

When a revocable contract is stipulated within another binding contract, the effect of the revocable contract is treated as an ancillary obligation of the binding contract and gains binding force from it. Terminating the revocable contract would be akin to attempting to dissolve one of the commitments created by the binding contract, which is not permissible. However, if the stipulation benefits only one party, the beneficiary of the stipulation may always waive the benefit.

The waiver takes place within the binding contract, but with the broad scope provided by Article 10 of the Civil Code for freedom of contracts, there is no longer a need for this formality for the enforceability of the parties' intentions. The will of the parties creates obligations on its own, irrespective of its form, and the parties can independently decide on the waiver of rights (concept of Article 959 of the Civil Code). For example, the principal can grant an irrevocable power of attorney to the agent without needing any formalities. According to Article 611 of the Civil Code, a deposit is a revocable contract, meaning that the depositor can request the return of the deposited property from the trustee at any time, and the trustee also has the right to decline further responsibility.

In jurisprudence, the revocability of the deposit contract is one of its undeniable characteristics, to the extent that a consensus has been claimed on this point. However, based on the aforementioned premise, this characteristic of the deposit contract will be examined, and its various aspects will be reviewed. As explicitly stated in Article 607 of the Civil Code, a deposit is a revocable contract. The question arises as to whether it can be stipulated within another binding contract, or whether the parties can waive their right to revoke it within the deposit contract itself, and finally, what effect a time limitation in

the deposit contract would have. These topics will be addressed in different sections of this discussion.

5.5. *The Status of Trust in Terms of Revocability and Binding Nature*

As for whether a trust is revocable or binding, it is sufficient to say that once a trust is correctly established, neither the trustee nor the settlor can terminate it. For instance, the trustee cannot refuse to carry out their responsibilities under the trust, even by attempting to reject the trust itself. There are even examples of trusts where the trustee cannot reject the trust, even if they are unaware of its existence.

Likewise, the settlor cannot withhold the property from the trustee after transferring it. Thus, in comparison, trust can be considered similar to deposit as a binding contract.

Article 607 of the Civil Code prescribes a time limit, but this explanation is acceptable only if a specific period is defined for the deposit. A lease without a specified duration is invalid, and if no time is set, it must be concluded that the deposit contract results from the mutual consent of the parties and that the contract is binding. Another explanation for the validity of such contracts is that, although it is referred to as a deposit by custom, the "deposit" mentioned in the Civil Code does not apply in this case. Instead, it is a type of lease or contract that, under Article 10 of the Civil Code, should be recognized as valid and enforceable. However, given that the author believes that the gratuitous nature is inherent to the essence of the deposit contract, any condition of consideration, if it does not render the contract void, would change the nature of the deposit into a lease or reward contract.

6. Discussion and Conclusion

A deposit is a contract by which a person (the depositor) entrusts another to safeguard a valuable item (property) gratuitously. A deposit is not one of the permissive contracts; rather, only loan fits the definition of a permissive contract because permissive contracts are so named due to their immediate and direct effect of granting permission, not an obligation. Since permission can ultimately result in the gratuitous authorization of the use of property, a deposit contract cannot be classified as a permissive contract. This is because its direct and immediate effect is the delegation of responsibility to the trustee to safeguard the deposited property gratuitously.

Moreover, in English law, according to interpretations, trust is not classified as a contract but can, to some extent, be considered an agreement. Contrary to the belief that deposit is a non-binding and real contract, deposit is, in fact, a binding contract, and even before the delivery of the property to the trustee, obligations exist. However, the execution of these obligations depends on the delivery of the property to the trustee. Since the general rule for contracts is that they are consensual, deposit is also a consensual contract, as the legislator has not required any formalities for its formation. The deposit contract is concluded by the mere offer and acceptance of the depositor and the trustee, and the safekeeping of the depositor's property is the essential purpose of the contract.

Trust cannot be classified as a real contract in the sense used in Iranian law. Given the emphasis on the formalities related to the transfer of ownership in a trust, it seems that the delivery of property to the trustee does not affect the creation of the trust; otherwise, it would have at least been mentioned.

A deposit is a gratuitous contract, and any condition of consideration, if it does not invalidate the contract, would alter the nature of the deposit to a lease or reward contract. If a deposit contract stipulates that the trustee, upon returning the property, has the option of returning the original item or its substitute, the deposit contract loses its original nature and may, depending on the case, become analogous to a loan or another contract. Therefore, the obligation to return the original item in a deposit contract is one of the essential features of the deposit.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

Acknowledgments

We would like to express our gratitude to all individuals helped us to do the project.

Declaration of Interest

The authors report no conflict of interest.

Funding

According to the authors, this article has no financial support.

Ethical Considerations

Not applicable.

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