

Option of Fraud in Virtual Transactions and Its Comparison with Non-Virtual Transactions from the Perspective of Islamic Jurisprudence and Statutory Law

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The option of fraud is among the options explicitly stipulated in the Civil Code. The legislator has explicitly mentioned certain options in the Civil Code, which include ten types of options; however, there are also instances mentioned within other articles of the Civil Code, with Article 396 enumerating the explicitly stated options in the law. In both virtual and non-virtual domains, the primary issue is the first cause of forfeiture, which is the condition of forfeiture stipulated within the contract. Fraud is defined as a significant imbalance between the value of the two considerations in a contract, which gives rise to the option of fraud for the defrauded party. The essential conditions for the realization of the option of fraud include the contract being reciprocal, the imbalance of the considerations, and the ignorance of the defrauded party. The option of fraud is immediate. There is also a difference between virtual and non-virtual transactions. With the use of the global Internet network today, many messages and data can be sent or received, allowing individuals, companies, and business enterprises to easily introduce, offer, and purchase their goods or services globally through the creation of an online platform. In addition to the Internet, other electronic communication tools are also used to form contracts, and the number of these tools is so vast that they cannot all be enumerated. In cases where buying and selling are conducted through correspondence, as the parties do not gather in the same place to conclude the contract, there is no doubt that the condition of forfeiture of the option is not fulfilled. Therefore, this forfeiture has several conditions: first, the buyer must have possession, meaning the buyer has been defrauded and has taken possession; second, it must be before the knowledge of the fraud, meaning the buyer has not yet become aware of the fraud; third, this possession must remove the property from ownership; and fourth, the possession must be necessary, with these four conditions rendering the possession as a cause of forfeiture of the option of fraud. In this regard, if a distinction is made between virtual and non-virtual transactions, given that in virtual transactions the property is delivered to the buyer later and thus the buyer discovers the fraud later than in non-virtual transactions, it seems necessary in virtual transactions for the defrauded party to take possession of and inspect the property.

Keywords: *Option of fraud, transaction, virtual, non-virtual, Islamic jurisprudence, statutory law.*

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1. Introduction

This article explores the subject from multiple dimensions. The option of fraud is studied in both virtual and non-virtual transactions, with consideration of the presence or absence of the forfeiture condition from the perspective of Islamic jurisprudence and Iranian statutory law. In this study, the fixed variable is Imamiyyah jurisprudence and Iranian statutory law, while the dependent variable is the condition of forfeiture of the option of fraud in both non-virtual and virtual transactions.

Humans are social beings who cannot resolve their problems and needs alone. Therefore, to address these problems and meet their needs, they interact with others, whether virtually or in person. They engage in transactions with others. Contracts concluded between individuals to meet social needs may be gratuitous but are not always fair. An imbalance between the values of two considerations in a contract may cause one party to incur a loss, receiving a benefit that is disproportionate to what they have given. In Islamic jurisprudence and the Civil Code, the aggrieved party is granted the right to either rescind or accept the contract under these conditions. The option of fraud is considered a remedy for compensating the loss resulting from one party's failure and is applicable in both virtual and non-virtual contracts.

Consequently, whether in face-to-face non-virtual transactions or remote virtual transactions, if the imbalance between the values of the two considerations disrupts the economic equilibrium of the contract, the issue of "fraud" arises.

2. Option of Fraud in Civil Law and Islamic Jurisprudence

The option of fraud is one of the options explicitly stipulated in the Civil Code. The legislator in the Civil Code has explicitly listed ten types of options; however, some options are also mentioned within other articles, with Article 396 enumerating the stipulated options as follows: option of session, option of animal, option of condition, option of delayed payment, option of inspection and breach of description, option of fraud, option of defect, option of deception, option of partial defect, and option of breach of condition. Therefore, as explicitly stated by the legislator of the Islamic Republic

of Iran, the option of fraud is one of the stipulated options in the Civil Code. The application of the option of fraud varies across different contracts depending on time and place and does not apply to all reciprocal contracts.

An examination of Islamic jurisprudence, particularly reference books such as *Tebserat al-Muta'allemin* by Allama Hilli, under the discussion of the option of fraud, defines it as selling at a price lower than the fair market value or buying at a price higher than the fair market value, where the defrauded party (either the seller or the buyer) was unaware of the fair market value. The price difference must be significant enough that people would not disregard it. In such cases, the defrauded party has the right to rescind the contract (Helli, 2001). This option is available to both the buyer and the seller and is not exclusive to one party. Moreover, there is no doubt about the grossness of the fraud, as minor price fluctuations in any sale compared to the actual market price are common and are not deemed disruptive to the transaction by custom (Helli, 2001). Therefore, the ignorance of the defrauded party at the time of the transaction is one of the essential conditions for the option of fraud. This condition is also applicable in electronic transactions because if one party knowingly agrees to a transaction despite the price being too high or too low, they are considered to have consented to the terms of the contract. Thus, the establishment of the option of fraud in electronic transactions is similar to that in physical transactions, contingent upon two conditions: "the defrauded party's ignorance of the fair market value at the time of the contract" and "a price difference exceeding the customary margin of tolerance." Consequently, the option of fraud does not arise if the defrauded party becomes aware or if the price difference is deemed negligible by custom (Najafi, 1995), as minor price variations in a single market are common and insufficient to invalidate a transaction.

The critical question in this regard is whether the condition of forfeiture of the option is feasible in electronic sales. If it is not explicitly stipulated, does this mean that the option cannot be applied in electronic contracts? Addressing this issue is necessary because the virtual and cross-border nature of electronic commerce necessitates serious attention to the various jurisprudential and legal aspects of such businesses, raising numerous challenges that need resolution. One of these challenges is determining how the condition of

forfeiture of the option can be applied in electronic transactions. Since this is a novel and unprecedented issue, there is no comprehensive literature on the subject. Examining these matters and addressing the aforementioned challenges can help identify the factors leading to the condition of forfeiture of the option, understand the relevant rules, and clarify the foundations and justifications for establishing such conditions, while also resolving ambiguities regarding current and future challenges in this jurisprudential and legal institution. This is especially crucial given that, in the near future, electronic transactions may surpass non-virtual transactions in volume, making it essential to address the legal issues associated with this type of transaction.

Electronic contracts can be concluded through various methods, including: 1) contracts via telegram, telex, telecopy, or fax; 2) contracts through internet platforms; 3) contracts via email; and 4) contracts through electronic data interchange (Rezai, 2014). The condition of forfeiture of the option has been established for all types of sales through conventional methods. However, this study seeks to answer whether the condition of forfeiture of the option applies in both virtual and non-virtual electronic sales. In other words, can the rules of the condition of forfeiture of the option be applied to electronic contracts?

The option of fraud is one of the common options in all transactions. The option of fraud and the condition of its forfeiture are prevalent issues in society, with most people encountering them in both virtual and non-virtual transactions and contracts. Therefore, a scientific examination of this issue can enhance individuals' understanding and awareness. Given that discussions on the forfeiture of this right are scattered in jurisprudential sources and that the Civil Code does not comprehensively address the possibility of forfeiting this right, studying the causes of forfeiture of the option of fraud and its relation to public order and trade interests is essential. This article examines the option of fraud in virtual transactions and its comparison with non-virtual transactions in the presence of the condition of forfeiture from the perspective of Islamic jurisprudence and statutory law.

3. Definitions and Concepts

3.1. Definition of Option

The meaning of "option" in legal terminology differs from its literal meaning, and there is disagreement among jurists regarding its definition. The author of *Jawaher al-Kalam* defines option as "the right to affirm or annul the contract" (Najafi, 1995). The author of *Eidah al-Fawaid* defines it as "the right to rescind the contract" (Fakhari Tusi, 2006), which is the most appropriate definition and has been accepted by many jurists after him. Therefore, the right to rescind a contract means the power of an individual to annul the contract. All permissible and obligatory contracts possess options, even though this is contrary to the principle of binding contracts. Both parties to a contract are bound to adhere to its terms (Shahid Thani).

3.2. Definition of Fraud

Fraud in linguistic terms means deception, trickery, and deceit. In essence, it refers to misleading someone in a transaction, whether by purchasing at a lower price or selling at a higher price (Mohammad ibn Hasan Hilli, 2006). Another legal scholar defines fraud as "a loss suffered by one of the parties to a transaction due to a disparity in the value of the exchanged considerations (or reciprocal obligations)" (Amiri Qayem-Maqami, 2006). The most comprehensive definition of fraud is provided by Dr. Katouzian, who states: "Fraud is a loss incurred during a transaction due to a significant disparity between the value of what is to be given or performed and the value received in return" (Katouzian, 2024). This definition is considered the most complete as it encompasses all elements of fraud, including:

1. Fraud applies only to reciprocal contracts where two values are exchanged.
2. There must be a significant disparity (lack of balance) between the considerations at the time of the transaction.
3. The aggrieved party must be unaware of the real value.

Although fraud linguistically means deception and trickery, in legal terms, the presence of deceit or trickery is not necessary for fraud to be established (Haeri, 2023). Thus, even when both contracting parties are unaware of the real value, if there is a significant disparity between

the exchanged considerations, it still constitutes fraud, and the aggrieved party is considered defrauded, regardless of any deception or trickery (Mohammad ibn Hasan Hilli, 2006).

"Fraud" (with a silent "b") means deception and misleading (Amid, 1996), misrepresentation (Fakhari Tusi, 2006), and breach of contract (Katouzian, 2024). However, *ghabana* (with an open "b") refers to lack of judgment or intelligence (Fakhari Tusi, 2006).

3.3. Definition of Forfeiture

Forfeiture, derived from the root "S-Q-T" in the form of *if'al*, means the act of causing something to fall, such as a person falling from a height. The phrase "sakata al-shay" means "it fell from above to below," making "fall" the result of forfeiture (Emami, 2019). It also means casting down, dropping, descending, falling to the ground, removal, and elimination in linguistic terms. In Islamic jurisprudence, forfeiture refers to the act of rendering a right, whether financial or non-financial, invalid (Katouzian, 2024). In legal terms, forfeiture means extinguishing a right, which may occur through a contract, exchange, or unilateral legal act, such as discharge of debt, waiver, or early repayment by the debtor. Forfeiture in legal acts falls under unilateral acts since it is accomplished solely by the will of the forfeiting party. However, if forfeiture is in exchange for receiving something, the agreement of the other party is also required, making it a type of contract in such cases.

4. Differences Between Virtual and Non-Virtual Transactions in the Forfeiture of the Option of Fraud

It is undeniable that there is a difference between virtual and non-virtual transactions in the forfeiture of the option of fraud. Despite the condition of forfeiture of the option of fraud, in virtual transactions, the right remains valid until the subject matter of the contract is received by the buyer due to the inability to physically inspect the goods beforehand. Therefore, in such transactions, the buyer cannot be deemed to have forfeited this right merely by conducting the transaction virtually. The option of fraud is immediate and must be exercised before the goods are delivered to the buyer. If the goods have not yet been inspected, and the buyer discovers the fraud upon inspection, the right remains valid.

In electronic and virtual contracts, Article 39 of the Electronic Commerce Act grants consumers the right to either await the performance of the obligation by the obligor or rescind the contract and receive a refund. This privilege in electronic contracts is specifically designed to protect consumer rights in such transactions, unlike non-virtual transactions where no such right is considered (Jafari Chermehini, 2017).

Shia scholars and jurists, through discussions on jurisprudential issues, have aimed to address the economic and social challenges faced by people and prevent harm to contracting parties. The Civil Code also grants the aggrieved party the right to rescind or accept the contract as is. The option of fraud serves as a means to remedy the harm caused to one of the parties, provided that the aggrieved party was unaware of the real value of the subject matter and the price disparity is significant. Additionally, the contract must be reciprocal. In line with this, Article 420 of the Civil Code states that the option of fraud is immediate upon the discovery of the fraud. Other legal scholars define the option of fraud as the right granted by law to the aggrieved party to rescind a contract or accept it as is due to a significant disparity in the exchanged values, often resulting from the deceit of one party. The aggrieved party is called *mabghoon* (defrauded), and the party benefiting from the fraud is called *ghaboon* (fraudulent party) (Emami, 2019).

5. The Status of the Option of Fraud in Imamiyyah Jurisprudence and the Iranian Civil Code

The option of fraud is one of the categories of options that has been examined as a common option in all reciprocal contracts in jurisprudential and legal texts. Fraud in Imamiyyah jurisprudence and the Iranian Civil Code is considered one of the causes and grounds for the option of rescission. The option of fraud is classified as a right, meaning it is a privilege granted by law to its holder to exercise within the legal timeframe if desired. The Civil Code does not provide a specific definition of fraud, nor does it elaborate on its rulings and causes of forfeiture. Therefore, general legal principles are relied upon in such cases. The option of fraud holds significant importance in modern transactions due to the descriptive nature of many sales, where any alteration in the described characteristics can invoke this option. Today, one of the clauses in ordinary or official sales

contracts is often the waiver of all options, especially the option of gross fraud, leading to the forfeiture of all options at the time of or after the conclusion of the contract. As stated, the option of fraud is immediate and must be exercised promptly after its discovery; any delay results in its forfeiture. Article 420 of the Civil Code stipulates that the option of fraud is immediate, and the defrauded party must exercise it within a reasonable period after becoming aware of the fraud, as any delay beyond what is considered immediate by custom results in its forfeiture.

Today, the Internet has become an inseparable part of human life, and virtual transactions have gained immense popularity due to their speed and convenience compared to non-virtual transactions. Contracts concluded on electronic web pages are considered adhesion contracts, as the seller displays goods and services along with necessary information and general terms on their web page (Maqami Nia, 2012). These transactions are treated like any other transaction, with the required legal conditions for validity and authenticity applicable. While virtual transactions and the resulting electronic contracts differ from non-virtual contracts in terms of communication, agreement, and expression of intent, the primary conditions for contract validity, such as mutual intent and consent, subject matter, legal capacity of the parties, and the lawful purpose of the contract, remain similar to non-virtual contracts.

Given the significant changes brought about by information technology in commerce, characterized by speed and ease, physical presence for negotiation and contract conclusion is no longer necessary. Traders can exchange views and proposals electronically, with the other party responding or making counter-proposals through the same means. Contracts formed in this manner are referred to as contracts between absent parties (Amiri Qayem-Maqami, 2006). Fraud can occur in such transactions just as in non-virtual transactions, with no difference in their legal nature.

Electronic declaration of intent is a form of contract conclusion that does not contradict the principles of contract validity. Although the Civil Code and other specific laws do not have explicit provisions for electronic contracts, their legal aspects can be determined by interpreting and reasoning from general contract law principles, comparing electronic contracts with traditional ones, and considering the nature of

electronic tools and environments. Identifying these aspects allows for a better understanding of the legal dimensions of electronic contracts and a precise analysis of their legal effects.

6. Conclusion

The option of fraud in both virtual and non-virtual transactions is one of the options common to all reciprocal contracts in Imamiyyah jurisprudence and the Iranian Civil Code, serving as a cause for rescission. This option pertains to a loss incurred during a transaction due to a significant disparity between the value given and the value received by an unaware party. Therefore, a party suffering loss in a virtual or non-virtual transaction has the right to rescind the contract. In all reciprocal contracts, both parties expect the consideration received to be of equal value to what is given. However, lack of awareness of market prices may lead to sales below or above the real value, and in such cases, Islamic jurisprudence grants the aggrieved party the right to rescind the contract through the option of fraud. The realization of the option of fraud in both virtual and non-virtual transactions requires three conditions: the contract must be reciprocal, there must be significant economic imbalance between the considerations, and the defrauded party must be unaware of the real value. Thus, the option of fraud applies only to reciprocal contracts and is irrelevant in gratuitous transactions or contracts without consideration.

Since individuals aim to maximize profits in transactions, this pursuit may sometimes disrupt the economic balance of the contract. Custom does not tolerate such significant disparities, and the law grants the option of fraud to the aggrieved party to prevent harm. Another essential condition for the option of fraud is the defrauded party's lack of knowledge of the real value at the time of the transaction. When these three conditions are met, the defrauded party gains the right to rescind or affirm the contract. Either the seller or the buyer may be the aggrieved party in a transaction, and in some cases, both may be defrauded.

Like other options, the option of fraud is classified as a right and can be forfeited through certain means. Explicit forfeiture occurs when the contract includes a condition waiving the option of fraud, or when the defrauded party, upon discovering the fraud, voluntarily relinquishes their right. Explicit forfeiture can occur before the fraud

becomes apparent or through a condition stipulated in the contract. Such a condition is only effective when included in the contract text, and any prior agreement on forfeiture before the contract is concluded has no legal effect.

Implicit forfeiture is another form of waiving the option of fraud, occurring when the defrauded party takes an action that implies acceptance of the contract and forfeiture of the option. One cause of implicit forfeiture is the act of taking possession of the consideration. Based on consensus, general principles, and the rule of no harm, possession can be considered a cause of implicit forfeiture if the defrauded party, after becoming aware of the fraud, takes possession of the purchased goods in a manner indicating acceptance of the contract. Possession before awareness of the fraud does not result in forfeiture of the option of fraud.

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.

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Declaration of Interest

The authors report no conflict of interest.

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Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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