

# COMPARATIVE STUDY OF TRANSACTION CANCELLATION WITH THE IMPLEMENTATION OF OPTION IN SALE OF ANIMALS IN JURISPRUDENCE AND IRANIAN CIVIL LAW\*

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**Abstract:** The issue of options and powers owned by transactors (buyer and seller) is one of the important parts of the jurisprudence, which includes a wide range that using these rules correctly will eliminates many existing disparities. Some rules are specific to each option such as option in sale of animals that determine the time of transaction cancellation. But there are a number of rules that are common to all options. What terms can transactors imbedded in their transactions and what is the position of options in discussion (which conditions can be forged)? In this article, option in sale of animals and its nature are reviewed in detail and the common rules of options in general. Also, the order of animal loss during the time of option is reviewed in the traditions and views of jurisprudence scholars and lawyers and duration of applying options is examined due to time and power of the researcher, more general study and executive guarantee is required to make these rules more applicable.

**Keywords:** Option in sale of animals. Transaction termination. Optional sale.

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## I. Introduction

Current community is developed in terms of needing interactions, including buying and selling foodstuffs, property, machinery, and everything that is being sold and bought, therefore, it is better to know a little about contracts and termination of transactions in order to do not face problem in such situations. In case those goods are animal, customer can cancel it within three days of the contract, and if the seller does not accept this, the buyer can request the withdrawal from the court by submitting a sample application.

Goods after realization of put option until it is not cancelled is customer property and seller cannot resell the goods until the first one is not cancelled and customer can sell it to another person after the end of option deadline; however it has not yet been seized, provided that the seller has not terminated the deal during the term of option. In option in sale of animals, it is said "the animal buyer can cancel the deal up to three days after the transaction." If the customer's animal capture is in a way that typically indicates customer's satisfaction, option in sale of animals will be cancelled, like the animal is shoed or it is painted. And if the animal was died during this time, the sale is void.

## II. Options rules

The purpose of options rules are those rules that are ongoing in all options; otherwise each option has its own rules, such as option of meeting place, animal, lesion, etc, and as these rules are flowing on all options, they can be called as dominant rules on options, which we mention them below:

1. Option is created by contract, and it is a right that causes one of the transactors or both of them cancel the irrevocable contract and terminate it. The aforementioned right is created by contract, except in option for delayed payment of the price, option for insolvency, and option of unfulfilled conditions that leads to creation each of them after contract.

2. Various options may be made in a contract, for example, option of meeting place and option in sale of animals in selling animal are created immediately after the contract. In this case,

you can resort to one of the options or all the options in the contract in order to terminate the contract, and if one of them is cancelled in any reason, the rest of options can be applied.

3. The presence of option in sale does not prevent the possession of goods by contract. Due to the contract of sale, the customer is the owner of the property and this is the same in all kinds of sale including absolute and conditional and optional. Therefore, article 364 of the Civil Code states: "In optional sale, the ownership is during contract of sale, not from the expiration date of the option", in optional sale, the customer ownership toward goods during the term of option is unstable, therefore, in accordance with article 460 of Civil Code, in conditional sale, customer cannot seize goods which is inconsistent with option including remittance, etc.

4. Option is a financial and transferable right:

A: Transferring option by contract: The option is a financial right for the option owner and he/she can transfer option if it is against him/her in any way, such as compromising the option, the result of transferring of option to the one that option is against him/her is that transferee will be the owner of the option and he/she can cancel the contract and/or cancel the option. Option is not transferable to a third party because third person cannot be benefited from an option of transactors.

B: Transferring option by inheritance: According to article 445, each option is transferred to the heirs after the death "because the option is a financial right and it transfers to the heir as a result of death. In two following cases, the option will not transfer to the heirs:

A) If the condition of option is bound to counseling a person, it will not transfer to the heirs according to the order of article 446.

B) If the condition of option is placed for a person other than the transactors, it will transfer to the heirs of a person in whose favor a condition is made in accordance with article 447.

5. Signing contract and renouncing a right of option: The right of option is among financial rights and financial rights can be renounced, since the owner can seize any property. Therefore, option can be renounced after the contract. If the option is not available, it cannot be renounced.

6. Urgency of option: The option owner can not delay in implementing it, causing damage to its own side. Of course, this is the case in options that delay in implementing them will cause a considerable loss, otherwise in options that do not suffer from delay, the option holder can, for as long as he wants to delay the option implementation, such as option in sales unfulfilled in part, article 441.

7- Termination of a contract: Termination is cancelling a binding contract in cases that the law permits. Termination is the same as option renouncing and the obligation to contract are among unilateral legal acts and without the consent and presence of the other party is realized. Possessions that are typically discovered by cancelling the transaction are the current termination in accordance with article 451 of the Civil Code, termination, in accordance with article 449, are achieved by any term or act which implies it. Termination is like rescission cancels contract since writing termination and it prevents its effects.

The last point is that the underlying principle of options is based on the overcoming of one of the two principles of will and no damage. The option termination has a supportive and private face at all times, and it should not be considered among rules related to public order.

Article 396 of the Civil Code states:

Options are as follows: 1- option of meeting place; 2- option in sale of animals, 3- Option of conditions, 4- Option for delayed payment of the price, 5- Option of inspection and option of incorrect description, 6- Option of lesion, 7- Option of defect, 8- Option of trickery, 9- option in sales unfulfilled in part, 10- option of unfulfilled conditions;

### III. The nature of option in sale of animals

It is the case when the deal is related to the animal, the customer has the right to terminate the transaction up to 3 days from the time of contract, and of course it is the case unless its cancellation is not mentioned or customer does not seize it.

The time for “option in sale of animals” is three days, and this is from scholars’ fatwa which has a great reputation. And it is well-known for jurists (i.e. the fatwa that most jurisprudents have ordered); it has been claimed in the book of “Entesar and Tazkareh and al-

Khalaf and Sara'er and Javaher” that the jurists have consensus on this fatwa. And narrations have been quoted that prove this claim. Some jurists have stated that during these three days, the seller is the guarantor of the animal. In different references, a fatwa was given that alimony (person expenditure and necessities) of animal is the responsibility of the seller in three days, whether this animal is of human origin and non-human kind. It is stated in the culture of jurisprudence, according to the religion of the Ahl al-Bayt (AS), that the beginning of the option in sale of animals is the time of the contract. And, some early scholars believed that the beginning of it is the separation time of two sides of the transaction from each other. (A group of scholars under the supervision of Shahroodi, Seyyed Mahmoud Hashemi, the culture of jurisprudence according to the religion of the Ahl al-Bayt (AS) (p. 545)

#### IV. Definition of time option

The option is limited to a certain time and it is spoken in business. The option is divided into time and non-time options in terms of limitation and non-limitation of time: the time option is limited to a particular time by lawgiver, such as the option in sale of animals or it is limited by two parties of the transaction, such as option of conditions, and in contrary, there is a non-time option that is not limited to a specific time, such as option of lesion, option of defect, option of inspection, and among the famous jurisprudential rules is the rule of wasting during the option; that is, if the goods or its costs were lost at the time of the option, it would go out of someone's pocket who did not have option and some said: The appearance of jurists' speeches (loss at the time of option) is a time option. Consequently, the rule does not include non-time option, and it is quoted from some that the acquisition of property in a time option is subject to the termination of the option time or its renouncing. The result is that the possession is not realized merely by contract. The length of the animal's option is three days from the date of contract conclusion, so that after the contract, immediately after the expiration of the three days the customer can terminate the contract. (Imami, Seyyed Hassan, Civil Rights (Imami), Volume 1, p. 480) and the day, according to article 443 of the Civil Criminal Procedure Act is considered 24 hours, therefore if contract of sale time is concluded at 10 a.m. on Saturday, option in sale of

animals will remain until 10 a.m. on Tuesday, and the customer can at one time have a termination option in two reasons that one is option of meeting place and the other is option in sale of animals, because the integration of different legal instruments will not be obstructed at the same time.

Anyone who buys an animal has an option for three days from the deal, so if the deal takes place on the first day, he/she has option for three whole days and two nights, but if the deal is during the day, like the first one, buyer has an option for three day and nights, that is, until the noon of the fourth day, and if the seller and buyer do not separate until three days passed, then the option is cancelled, but option of meeting place is remained (Kabuli, Mohammad Ishaq Fayyaz, Risalah (Fayyaz), Vol. 1, p. 332), and "Imam Khomeini" says in this regard: "option in sale of animals is three days from contract" (Khomeini, Seyyed Ruhollah Mousavi, Tahrir al-Vasile, Vol. 2, p. 110)

The person who buys the animal has an option from the time of the contract for three days for cancellation. Therefore, option in sale of animals starts at the time of the contract, so if the seller and the customer do not decompose, within a period of three days, the option in sale of animals will expire, but option of meeting place will remain due to the appearance of the text which says: "En Al-shart fi al-Haywan salas ayam and fi gheyra hata yatafaragh", and the purpose of at the time of contract that option in sale of animals begins is not only the time of execution of formula, but also the purpose of possession time. And since the prevailing is obtained during contract, thus it is said that the beginning of option in sale of animals is from contract, so if someone buys an animal, he has an option from the time of getting animal to three days, of course, the purpose of three days is day and night which includes the night.

#### V. Rule of loss of animal during the option

If an animal dies after the days of "option in sale of animals" (three days), the buyer will be liable, but if it dies during the three days, whether the buyer has got the animal or not, "option in sale of animals" belongs to the buyer and the animal loss is responsibility of seller and this is a consensual ruling, of course, if the buyer has not made a change in the animal (he did not

create a state of uncleanness), and if he has created a state of uncleanness, as it was said, "option in sale of animals" will be void and this will not be subject to this ruling. Also, in goods loss after giving at the time of option of meeting place and option in sale of animals and condition, if the option is specific to the customer, the loss or defect is left to the buyer that article 453 of the Civil Code confirms this case (Imami, Seyyed Hassan, Civil Rights (Imami), Vol. 1, P. 553) said that because of the fact that it is not related to the transactors, the transaction itself is terminated and dissolved, and in the rules of jurisprudence (Yazdi, Seyyed Mostafa Mohaghegh Damad, the rules of jurisprudence (Mohaghegh Damad), Vol. 2, p. 313) said that the famous of jurisprudents by the word of "condition" written under the narration implies the option absolute and, by joining option of conditions to option in sale of animals it is said that liability of object of sale loss during option in sale of animals or option of conditions – whether the object of sale is animal or not- if the option is unique to the customer and object of sale is grasped by him/her, the seller will be responsible and in magazine of Ahl al-Bayt jurisprudence (a number of authors, the jurisprudence magazine of the Ahl al-Bayt (AS), vol. 7, p. 169) it is stated that these rules apply only to transactions that have a certain meaning, such as the rule of object of sale loss during option and the rule of "Mayazman besahih yazman befesade...", and in the book of "Makaseb" Sheikh Ansari (Dezfuli, Morteza bin Mohammad Amin Ansari, Book of Almakaseb (Lesheikh Alansari, vol.3, p. 101 and 102) states: about this rule that is unique for object of sale, no rule is existed about consideration loss that is ascertained object, although a group of jurists believe that it is flowing in the consideration, but the strong belief is that this rule does not flow in consideration, as well as in the book of Makbasat of Sheikh Ansari (Ansari, Morteza; Al-Mekasb, p. 5, pp. 83 to 110), valghavaed al-fiqhe of Mr. Bojnurdi (Bojnourdi, Seyyed Hassan ibn Aqa Bozorg Mousavi, Al-Qawaed al-Faghiheh (Lelbojnordi, Al-Seyed Hassan), volume 2, pp. 132 and 133) states that "object of sale must be person him/herself, and if the object of sale is a general one and the case has been chosen and given to the other party, there is no such rule." And again about animal loss during options it is said that:

"If the animal is died at the time of option, it is owned by seller, although it is after delivery, of course, in case of no excess and defect" (Helli, Mohaqiq, Najm al-Din, Ja'far ibn Hassan, Al-Mukhtasr al-Nafa' fi foghaha al-emamieh, p. 131).

And also, it is said about object of sale loss during option that: “if object of sale is died during option, and it is before time of customer delivery, it is owned by him/her and the contract is cancelled” (Heli, Allameh, Hassan ibn Yusuf ibn Mutahar Asadi, *Tazkarat al-foghaha (t-alhaditha)*, vol. 11, p. 179), and related to object of sale loss before delivery it is written "if object of sale loss happened before delivery, it is owned by seller and if it happens after delivery or after breach of option, it is owned by the customer" (Aameli, Shaheed Sani, Zayn al-Din bin Ali, *Masalak al-A'fa'am ela tanghih sharee eleslam*, vol. 3, p. 217). And in the book of the rules of jurisprudence (Yazdi, Seyyed Mostafa Mohaghegh Damad, *the rules of jurisprudence (Mohaghegh Damad)*, Vol. 2, p. 311) it is said that if the animal is died during the option period (whether it is a conditional or non-conditional option), it is considered that the animal is owned by seller. According to what was discussed in the above about the animal's loss rule, it seems that what Shahid Thani is mentioned in the book, *Masalek al-Alafam*, is better and stronger. Now, briefly, this great scholar is explained. Zeinal Dean ibn Ali, known as "Shahid Thani", is among great scholars of Shiite jurists who was skilled in most of the common sciences, including jurisprudence and principles, interpretation and theology, philosophy and mysticism, and astronomy and medicine. He was born in 1505 and was martyred in 1560. He taught for some time in Baalbek in five religions of Shi'a Ja'fari, Hanafi, Shafi'i, Hanbali and Maliki. One of his most famous books is the description of “*Lambah and Masalak al-Alafam*” in the description of the scholar's descriptions, and in the book of “*Derasatna, men al-Fiqh al-Jafari*”, it is mentioned that "Lo talafa almabih baada alsalasa kana men albae ejmaa" (Qomi, Seyyed Taghi Tabatabaee, *Dera Satana, men al-Fiqh al-Ja'fari*, vol. 4, p. 273). Of course, the consensus of the jurists is that if object of sale is lost in three days, it is owned by seller. Therefore, if it is before delivery of object of sale it is up to seller and if it is after that, or if its option time is gone, it is up to buyer. Although renowned jurists, both the prior and the later, believe that the transfer of ownership to the contract is accepted only by necessity, and even delivery and handing of object of sale and consideration have no effect on it, and the existence of right of cancellation is not an obstacle to it, and it is discussed in the rulings related to options rules that is apparently contradictory to this belief, whereby in the contract of sale, object of sale is lost after grasping and prior to the expiration of an option that is specific to one of the transactors, without



excessive use or failure of due care, liability is up to someone who does not have an option. This order is the provisions of a rule that is interpreted in the jurisprudence as follows: "Al-Talaf fi Zaman al-Khiyar meman lelkhayar lah" (loss at the time of option is for someone who does not have an option).

#### VI. The legal opinions of option in sale of animals

As it is possible that an animal has a hidden flaw that cannot be detectable and it is difficult for normal people to detect sick animal from a healthy animal, civil law has given the purchaser the right to terminate the contract within three days from the date of contract of sale (article 398). Certainly, the basis of this option can be related more to the influence of traditions and habits than legal logic, because the exemption of buyer from the proof of mistake that caused him to regret the transaction will give him/her the uncertain destiny of the transaction. Also, the unlimited and unconditional discretion of the buyer has led it to consider it as exceptional and contrary to the principle and they say "Iran's civil code, following the famous statement of Shi'i jurisprudents, gives the right to terminate to customer only if object of sale will be an animal" (Imami, 2001, p. 1, p. 479).

But this interpretation, which seems useful in terms of limiting the range of option in sale of animals and providing the necessity, it makes the provisions of article 398 more abusive and should be neglected, because discrimination between consideration and object of sale cannot be established for any reason. When two properties are exchanged, the description of consideration and object of sale for each of these two is credit and somewhat fictitious. So, how can one claim that when two animals are exchanged together, and the two sides consider one of them object of sale, and the other one as consideration, someone who owns the animal has the right to terminate the transaction and the other to be deprived? Also, it is the case when animal is consideration against another commodity (object of sale) and seller wants to use right of cancellation. Therefore, it is more logical to say: article 398 of the Civil Code consider the prevailing case that the animal becomes object of sale and the buyer owns it. The intention is that each animal owner in sale has the right of cancellation up to three days, whether the buyer

(dominant) or the seller or both (Mirza Na'ini and Sheikh Mousa Khansari, vol. 2, p. 32; Tabatabai, 1994, vol. 2, p. 34). However, if the object of sale is an animal, the seller does not have the right of cancellation.

Also, Dr. Katouzian states in the book of the specified contracts, first volume, and no. 36: "In the case that the sale consideration is an animal, there is a doubt about the creation of option in sale of animals, and it is more logical to exist." Also, "option in sale of animals is created in sale of living animal, not the dead one. Option in sale of animals is a special for a case that objects of sale is specific." (Katouzian, 2014, vol. 1, no. 36)

Dr. Shahidi, in relation to the conditions of options, says: "1. Object of sale should be an animal, such as someone sells a horse to another, in which case the buyer can cancel the contract within three days from the date of the transaction. If the consideration of a transaction is an animal, option in sale of animals will be created according to some people; but this view has not been followed by civil law. Another theory is expressed and it says in a transaction that object of sale is an animal, in addition to the customer; seller also has option in sale of animals.

Among these ideas, the theory that consider option in sale of animals unique to the sale whose object of sale is an animal, and also consider the option unique to the customer is more well-known and more consistent with the principles and rules, and therefore it is followed by civil law. As the option is a contradiction with rule due to contradiction with contract necessity principle, and an order contrary to the rule cannot be extended to unmentioned cases in the law.

2. Object of sale is may be ascertained object or universities fact from right now or universities fact from specified thing. Whole object of sale is like a bee or a silk worm.

3. The deal's animal may be large or small, like a silkworm, but it must be alive. Therefore, whenever someone sells some carcasses of sheep or fish to another person, the buyer will not have any option; because, in that case, the object of sale is no longer the animal, but it is actually meat. Option in sale of animals is three days long, and after three days it is canceled.

Dr. Emami also referred to the option in sale of animals in the Civil Rights Book, Volume I: "The civil law, following the evident statement of the Shiite jurists, right of cancellation is recognized only for the customer, if object of sale is an animal. There are two other statements in Imami's jurisprudence.

1. If the consideration is an animal, seller will has the right of cancellation, so that if object of sale is an animal, the customer has the right of cancellation, for example, if someone sells a cow instead of two sheep, both seller and customer can cancel the sale within three days.

2. In sale of an animal, seller like the customer can terminate the sale within three days, though the consideration is not an animal.

Option in sale of animals is flowing in specified and general object of sale, since the application of the abovementioned article requires inclusion and it is not a reason for assigning it to an external object of sale. The jurists of Imamie have not stated anything about this, and it is only a precaution from the book of Javaher al-Kalam that option in sale of animals is unique to a sale whose object of sale is a concrete object.

The word of the animal in question is absolute and it consists of each animal, so there is no difference between when object of sale is big animals like cow, camel, horse, sheep and goat, or small animals such as chicken, fish, silkworm, honey bee and the like, but the animal must be alive, since the use of the animal is dependent on living, so option in sale of animals is not flowing in sale of a smoky fish and hunt after being killed.

The term of option in sale of animals is three days from the date of contract of sale, so that after the contract, immediately until the expiration of three days, the customer can terminate the contract. The day under article 612 of the Civil Procedure Act is considered twenty four hours, so whenever contract of sale is occurred at ten in the morning on Saturday, option in sale of animals will remain until Tuesday at 10:00 a.m.

At one time, the customer can have right of cancellation because of two reasons, one is option of meeting place and the other is option in sale of animals, since the integration of different legal instruments at one time will not be prevented.

#### VII. The scope of implementation of article 398 of Civil Code

Article 398 of the Civil Code (If object of sale is an animal, the customer has a right of cancellation for transaction up to 3 days from contract time) should be interpreted restrictively

and it should be allocated to a matter which is not in doubt. This interpretation can be used in two cases:

1. Option in sale of animals is specific to a case that object of sale is a living animal; because in the common usage, the death animal, like a chicken or fish and sheep, are considered as objects, and mentioned wisdom that is stated to prevent the damage of animal sickness is only the case about the alive animal (Imami, 2001, vol. 1, p. 479).

2. Whether article 398 is related to a case that object of sale is specific animal or it is in a general sale, it seems it is specific to ascertained object, because in general sale, ownership does not happen from the time of contract, and no writer consider the beginning of option as the time of customer grasp. The recent statement seems to be stronger, because ownership does not happen from the time of contract in general sale, and no writer consider the beginning of option as the time of customer grasp. Therefore, the possibility of contract termination up to three days from the date of sale cannot compensate any losses, and the wisdom of article 398 is only the case that object of sale is ascertained object and the buyer owns it at the same time of sale. In addition, where it is found that the seller select goods from general cases that do not have conditional traits in contract, it is defect in the opinion of custom, his/her requirement may be submitted to a healthy person and no room will remain for implementing option. In fact, option in sale of animals is one of branches of option of defect, with the difference that in this case the legislator assumes object of sale defect and for this reason buyer is exempt from its proof. Therefore, as option of defect is specific to specified goods, option in sale of animals has no place in general object of sale (Ansari, 2001, vol. 5, pp. 83-110)

The origin of this option is from the time of the contract, so if seller and customer do not separate for three days, option in sale of animals will expire, but option of meeting place will remain. Also, option in sale of animals is among branches of option of defect, with the difference that the text assumes defect of animal and it has exempted buyer from its proof.

### VIII. Traditions of bought animal loss order at the time of option in sale of animals

And there are some traditions in connection with bought animal loss during the time of option in sale of animals, and some of them are mentioned, which include: “va khabar aghabe bin Khalid anal Imam Sadigh-As- an rajola eshtari mataa men rajol and oojab haghirane taraka almata endah... fasaragha almata men mal man yakoon? Ghala Imam-: men mal sahib almata-ela en ghal- faeza akhrajaho men beytaho falmobta zaen lehaghahoo hata yarod” (Ameli, Hor, Muhammad ibn Hassan, Waseel al-Shi'a, volume 2, block 10 “men Abuab al-Khayyar”); (Hosseini Rouhani, Seyyed Mohammad Sadeq, Feghho al-Sadeq (AS) (vol. 17, p. 116).

However, a part of traditions refers to this order, in this regard, a correct narration of Ibn Sinan from Imam Sadiq (AS) is referred that is about a man who bought a four-legged animal or a slave, and he made a condition for one or two days and this slave and animal were died or the buyer made a interference and possession for this goods, then, who is the guarantor? The Imam says: As long as the time limit of three days is not over, the seller is the guarantor, or the property belongs to the buyer. (Ameli, Hor, Muhammad ibn Hasan, Wasaleh al-Shi'a, volume 2, block 5 from Abuab al-khiyar, volume 2, 3, 5 and 1)

In Thahzib, it is said like this tradition, but at the end it adds a phrase "whether the seller make a condition or not" (Ameli, Hor, Muhammad ibn Hasan, Wasaleh al-Shi'a, volume 2, block 5 from Abuab al-khiyar, volume 2, 3, 5 and 1)

Also, in a “morsal tradition” (Hadith Mursal is a tradition that the narrator does not mention the intermediaries and the narrative between himself and the Imam or the Messenger of Allah (peace be upon him and his family)) that is narrated from Imam Sadegh (AS): if before the end of three days something happens to the animal, it is up to the seller. A narrative of Imam Sadegh was quoted by Basari: If a person buys a bondwoman and puts a condition and she was died, as long as the condition terms is not finished the buyer is not guarantor.

In the discussion of option of conditions, some traditions are also stated that prove this order. In this regard, narrations of Ishaq bin Ammar and Mu'awi ibn Mughayre should be referred. Therefore, the right of cancellation about these two options is among categories that there is no debate about them and everyone agrees, and jurists have emphasized this very

much, and this rule is jurisprudence that the jurists have deducted from traditions concerning "option in sale of animals" and option of conditions.

Some say: "originally a person obligation is an exception for any liability until this liability is proved by a reason" it necessitates that the price of commodity is removed (which it is not considerable).

And Aqaba bin Khalid narrated of Imam Sadiq-AS: "A man has bought a piece of property and has definitively concluded this deal, but the goods are still at the disposal of the seller ... if that property has been stolen, which one will be the owner? The Imam said: the owner of the goods ... and if the seller takes out the property from its place is the guarantor until he/she returns the property"(Ameli, Hor, Muhammad ibn Hasan, Waseel al-Shi'a, vol. 2, block. 10 from Abuab alkhayar).

The generality of the reasons that necessitates honoring the promise implies that the loss of the animal is the responsibility of the seller, since the first two traditions are condemned for the sake of tradition wording and absoluteness of two other traditions is related to holding.

It may be argued that the rule support the narratives, and continuity of guarantee that was stable before the receipt of the goods will be a proof for this claim, it means any product that is lost before the buyer is received, the seller is liable, and this word is not without problem, although in terms of confirmation it is acceptable, there is no doubt in the mentioned rule. According to the above mentioned traditions, that each is related to the responsibility of bought goods at the time of the option which one is responsible the buyer or seller and Imam Ja'far Sadegh (as) said in the first and second tradition: The seller is responsible and it seems they are better and stronger than two other traditions

#### IX. When is the beginning of option in sale of animals?

The beginning of the option is from the beginning of the contract between the parties to the transaction, which it is said in this case (Hosseini Rouhani, Seyyed Mohammad Sadiq, Feghh al-Sadeq (AS) (Ielrouhanie) vol. 17, pp. 103 and 104).

The appearance of traditions as well as the fatwa of the jurists is that the beginning of “option in sale of animals” is from the time that sale contract is concluded and because the beginning of “option in sale of animals” is from the time of separation, some justifications are mentioned: the first justification is brought by the late Sheikh in the book of *Almabssout*: The right of cancellation is created when sale contract is concluded and this contract is not stable until separation of buyer and seller. And Imam Jafar Sadegh “as” says: anyone who buy goods from other person, both have right of cancellation until they separate, and as they separated the sale is required and right of cancellation is void (Ghomi, Sadhough, Mohammad ben Ali ben Babouye, *Men La Yahzaraho Alfaghih*, vol.4, p. 275). And about sale obligation it is said that “”. It said that sale obligation is from the time of separation of transactors (Koleinie, Aboujafar, Mohammad ben yaaghoub, *Alkafie (T-Darolhadith)*, vol. 3, p. 201 and 202).

Are two nights in the middle of three days of option in sale of animals among time of option in sale of animals?

Two nights in the middle of three days of option in sale of animals is an element of time of option in sale of animals and some said: third night is also among this time, because, firstly, it seems that word “Alyoum” means day in addition to night because the word “Alyoum” is a noun for total day and night or day and night are mostly called “Alyoum”, secondly as two nights in the middle of three days are in days of “option in sale of animals” for the same reason, the third night is also in times of “option in sale of animals” otherwise people will find difference in a similar set of using title.

Critique for this word: first: word “Alyoum” in terms of wording show daylight and widespread usage of “yaoum” for day and night is not such that it could be argued and second the existence of two nights in three days as a time that is not be referred in tradition, they are in “option in sale of animals” so in this case no problem is seen.

Another issue is that whether the purpose of “youm” is a complete day and integration of two parts of a day is sufficient for two different days or not, or the purpose is 24 hours that is obtained from summation of a night and day. It seems that the purpose is a complete day; however, it comprises a part of a day and another part from another day, because what was shown from the reasons says that the purpose is the time of daylight, i.e. the purpose is the hours

of a day that in this way two parts of two different days are included and summation of a day and night is not correct.

And anyway during this time that was defined, “option in sale of animals” is remained and if someone with right of cancellation wants to cancel the deal, then the deal will cancelled, of course, this is correct when no condition of option cancel is not expressed in the transaction or the buyer does not possess the property.

## X. Conclusion

Due to what has said in this article, regarding duration of option in sale of animals, famous statement for jurists is that the time of “option in sale of animals” is three days and this fatwa is very well-known and it is referred to in different literature of Shiite. Among them, in book of Entesar and Tazkerato alkhalf and Saraer and Javaher, it is claimed that jurists have consensus on this fatwa and some traditions are narrated in this case, some of early jurists make a fatwa that during these three days, seller is guarantor for the animal. And the later believe that its origin is the time of separation of two parties of transaction and the beginning of option in sale of animals is the time of contract and the issue that time of right of cancellation is expressed absolutely the time that buyer and seller are separated, therefore it includes “option in sale of animals” and if a goods that is traded is animal so option of meeting place is also included in its contract of sale and the beginning time of “option in sale of animals” is the time when the transaction contract is concluded and this fatwa was confirmed by some jurists and it is evident from the appearance of other scholars wording and the reason of right of cancellation is dedicated to express the verse of “oufou bel oghood” and it necessitates because with the assumption that right of cancellation is realized when buyer and seller are realized, the option is also realized and buyer and seller are realized when it is allowed to trade goods and consideration is allowed and there is no difference whether it is expressed or it is discovered and there is no problem that two nights in the middle of three days are considered as a part of time of “option in sale of animals” because traditions appearance imply that time of “option in sale of animals” is the beginning of three days and it continues until the end of three days.



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