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Analysis of the Nature of the Fulfillment of the Obligation in Iran and in France Civil Codes*

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Abstract
Completion of ambiguity and the provision of accurate legal interpretations requires the examination of various legal opinions. Legal rights regarding ambiguity are contained in Article 265 of the Iranian Civil Code which states that if someone gives property to someone else, it is assumed that he has not done it without consideration. This has been a matter of years of debate between lawyers. Some of them considered the problem as proof that someone who gave property was compulsory, and they believed that the request for expropriation of property must prove that there was no obligation to give and deserve to receive repayment of the property. Others believe in the lack of certainty of the obligations of the giver and require proof of the right to accept the recipient of the property. The findings of this study indicate that what caused the disagreement in the court was due to the Brief Article of the Civil Code of Iran, and a lack of attention to the legislator's ultimate goals in the public interest, and a lack of understanding of the difference between "giving property" and "paying money to others. "Among the legal experts made an interpretation of Article 265 of the Iranian Criminal Code and adapted it to Article 1235 of the French Criminal Code, because this provision does not say that anyone who provides financial assistance to someone is considered that he did not do so without consideration, so he could return it. The result of this deduction is *"praduga Juris tantum"* which will persuade the judge's conscience.
Keywords: Payment, Compliance with Obligations - Without Appeal Juris Tantum's Considerations

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Analisis dari Pemenuhan Alami dari Kewajiban Pada Kode Civil Iran dan Perancis

Abstrak:

Penyelesaian ambiguitas dan pemberian interpretasi hukum yang akurat memerlukan pemeriksaan berbagai pendapat hukum. Hak-hak hukum mengenai ambiguitas tertuang dalam Pasal 265 KUH Perdata Iran yang menyatakan bahwa jika seseorang memberikan properti kepada orang lain, maka itu dianggap dia belum melakukannya tanpa pertimbangan. Hal ini telah menjadi masalah perdebatan selama bertahun-tahun antara pengacara. Beberapa dari mereka menganggap masalah tersebut sebagai bukti bahwa seseorang yang memberikan properti wajib, dan adanya permintaan untuk pengambilalihan properti harus terbukti tidak adanya kewajiban untuk memberi dan pantas menerima pembayaran kembali properti itu. Sebagian lain percaya pada kurangnya kepastian kewajiban pemberi dan membutuhkan bukti hak untuk menerima pada penerima properti. Temuan penelitian ini menunjukkan bahwa penyebab perdebatan di pengadilan karena ambiguitas pasal Ringkas pada Kode Sipil Iran, dan kurangnya perhatian terhadap tujuan akhir legislator untuk kepentingan publik, serta kurangnya pemahaman akan perbedaan makna antara "memberi properti" dan "membayar uang kepada orang lain." Para ahli hukum melakukan penafsiran terhadap Pasal 265 KUHP Iran dan melakukan adaptasinya dengan Pasal 1235 KUHP Perancis. Hasil dari deduksi ini adalah "praduga juris tantum" yang dapat mempengaruhi hati nurani hakim.

Kata kunci: *Pembayaran, Pemenuhan Kewajiban Tanpa Banding, Anggapan Juris Tantum*

Анализ Характера Исполнения Обязательства В Гражданском Кодексе Ирана И Франции

Аннотация:

Кодекс поведения, который предусматривает: «если кто-то передает имущество другому, это считает, что он не сделал это без рассмотрения; ... "и сравнивает его с французским законодательством, которое на протяжении многих лет было предметом спора между юристами. Некоторые из них считают эту статью доказательством того, что лицо, передающее имущество, является обязанным, и считают, что запрос об экспроприации имущества должен доказать, что выкуп имущества не является обязательным, но другие считают, что отсутствие определенности в отношении обязанности дарителя и требование подтверждения принятия для получения на имущество получателя. Исследование показывает, что противоречивые мнения в судах обусловлены: 1- краткой статьей 265 гражданского кодекса ирана. 2. Отсутствие внимания к конечной цели законодателя в общественных интересах. 3. Отсутствие различия между «передачей имущества» и «выплатой денег другому» в уголовном кодексе ирана и его адаптацией к статье 1235 уголовного кодекса франции. Результатом этого является «презумпция juris tantum», которая убедит совесть судьи.

Ключевые Слова*: Оплата, Исполнение Обязательства Без Рассмотрения Апелляционно-Презумпционной Юрисдикции*

Introduction

Today, the level of trading and trading among people is more by means of advanced modern technology. It is not possible to receive receipts from the seller in many transactions and contracts. However, if the buyer gives the seller the money, but the seller refuses to supply the goods, the discussion of the fulfillment of the obligation is raised; or, in another assumption, a person pays a sum to another, claiming to be a loan or a deposit, a loan, and ... in other words, both agree on the money given, but they disagree in terms of reason. Article 265 of the Iran Civil Code has vaguely addressed this issue. On the one hand, the assumption of the presence of debt or obligation is not deduced from it, and merely refers to that there is a consideration for the payment. On the other hand, the article has included under the title of "Fulfillment of the Obligation," which payment may be deduced from.

Given that most Iranian Civil Codes have been adapted from the French Civil Code, we take French discharge of its obligations as the main source. Then, we will compare the differences to Iran's law. Later on, the study, analysis, and interpretation of the nature of "fulfillment of the obligation" are necessary. We also examine and criticize the various views expressed by French and Iranian lawyers on the nature of this issue, because the discussion and conclusion regarding Article 265 of the Criminal Code requires the legislator to determine the provisions of this article under the title of fulfillment of the obligation, as well as the analysis of the origin of Article 265, which is Article 1235 of the French Civil Code*: "Tout payment suppose unedette: ce qui aetepaye sans etradu, estsubjesta repetitio."* The word "supposer" in French has two different meanings; one is the "assume" and "presume". Any of these meanings can be used to prove each of the dual views. Therefore, in interpreting the material, it should refer to the works of French lawyers.

Payment Definition

"Payments" in the word means to pay, deduct and return, and "pay" in legal literature equivalent to "vindication", "fulfillment" and "fulfillment of obligation" (Langroudi & Jafar, 2009: 126, 100). A lawyer, taking into account that payment means commitment and fulfillment of an obligation, believes: "The word payment is different from the term giving because the meaning of giving is to give someone something, bestow upon an offer" (Reza, 2005: 166). Thus, the legislature did not use the word "payment" in Article 265 of the Criminal Code, which implies the fulfillment of an obligation, but the use of the

term “give” in the article suggests offering and giving, not the fulfillment of an obligation (Reza, 2005: 167).

The term used for the fulfillment of an obligation in Iranian Civil Code is an Arabic term and in Persian, there is a term meaning payment for the fulfillment of an obligation (Langroudi & Jafar, 2009: 658). Some other lawyers say: "when the subject of obligation is money, its fulfillment is called payment." (Katouzin 2008: 7). The term payment is coined through translation (Langroudi & Jafar, 2003: 168). When the subject of obligation is money, its fulfillment is called payment, for example, a check or a refund (Katouzin; 2008: 7). In French law, the term *"Le paiement"* is used in the same sense, and in the English-speaking countries, it is rendered as "payment", and in the Arabic language, the term "al-Dafa" is used (Bojnurdī: 46). Also, in French law, the legislator has used the term “Le Payment” to mean "payment" as one of the causes to fulfill obligations (Mehdi, 2010: 18). Which is a vague and inappropriate concept, which is why French lawyers have used two meanings for the term "payment" The general meaning of payment is fulfillment of an obligation and its specific meaning, which is the conventional and common sense, is the payment of a sum of money (Reza, 2005: 168, 169).

Payment types

The current paper addresses the types of payment that are defined in the law or its terms and conditions, and each of them is examined in terms of the title and effects, the fruit of the dispute in the extradition proceedings is evident, so that in the general commitment, if the payer decides refund and assumes his mistake in paying the obligation, he will not be entitled to the refund of property. However, if the subject is wrong payment, it is necessary for the payer and the claimant to shoulder the burden of proof to the court for proving the wrong payment because the basis for it is the prohibition of the use of illegally or illegitimate property.

Wrong payment

If everyone who pays without having the right to pay the financial entitlement to another, the receiver of the property has seized abusively, so the payer can refund payment. In our civil code, the term wrong obligation is not referred to, but in French civil law, separate articles have been assigned to it, which has

been adopted by the legislature of Iran (Emami, 1999: 356). To describe the wrong obligation, we need to mention the following:

1). Submission of the property as a fulfillment of obligation

Any kind of a size of the property is not necessarily wrong and cannot be sued for the refund by the owner under the title of wrong payment. In order to be wrong, a person must, through payment and performance of the owner, seizes another property, that is to say, the surrender of the property to another must be performed as a commitment or vow to the obligation, since the issue of fulfillment of obligation may be done as the same property return, in cash or and act. Another condition for the Wrong payment effect is that the payment made to the other is unduly; in other words, the receiver's seizure of property is due to the wrong payment, for which several instances and assumptions can be considered:

a). Payment without obligation

In the absence of a real obligation, and one thinks that there is an obligation and pays for it, for example, an heir, who believes that he owes an obligation, or that obligation has been dealt with for some reason (Safai & Rahimi, 2013: 13). The second clause of Article 265 of the Criminal Code confirms this point: "... if a person gives property to another, while he is under no obligation to do so, he can ask for the return of such property" (Emami, 1999: 356).

b). Payment of obligation to the non-relevant person

This assumption is that there is indeed an obligation and the debtor owes it, but pays it to a non-relevant person by mistake, in which case it is the wrongful act, so the receiver is obligated to refund the property to the owner.

c). Payment of obligation by non-obliged one

In this assumption, as in the previous premise, there may be an obligation, and the receiver of the property is actually the creditor of that obligation, but whoever pays that obligation does not owe that obligation, as "someone in a car accident, thinks he is responsible and pays compensation for his obligation and, then it turns out that another has been responsible for compensation" (Safai & Rahimi, 2013: 13). In this case, the giver can refund the amount paid.

What it seems necessary to consider is that the concept of "pay" is an act that is carried out in the process of fulfilling a commitment, that is why there is no obligation to act in a mistake, as there is no obligation and it is assumed that

to the contrary, it should not be regarded as honest, but because the surrender of the property is performed as a sacrifice and intended to do so and at that moment the submitter does not have an intent to pay. The intention is to pay, hence his action is called, although later, the absence of obligation becomes apparent; therefore, in the legal books, when the terms of the unfair term are enumerated, this condition is abolished. The term "surrender" is referred to as vindication to the promise or act, that is, the principle of non-satisfaction (Ghasemzadeh, 1998: 212). If there is doubt about the intention to perform a commitment, this is the intention.

2). Paying Obligation

Another type of payment is the payment of an obligation, which is one example of a commitment. A commitment is made when there are pillars of commitment. Before talking about the pillars of commitment, we need to discuss the commitment and definitions of the pledges by the lawyers.

Commitment in the word means the promise and the will (Bojnourdi: 46). A commitment to Islamic jurisprudence has also been used with the word "obligation." In Arab countries, the obligation has been used instead of commitment (Katouzian, 2008: 45). Commitment in English means an obligation, binding power, message or oath, or that the person responsible is to perform or abandon it.

Iran civil code does not present a definition of obligation, but lawyers, by themselves, have defined it. It is stated in the definition that "the obligation is a credit relationship between two persons that gives one the right to take action for another" (Emami, 1999: 356). Other lawyers define obligation and commitment the same and believe that "the legal relationship in which someone is in charge of doing something for another one." (Katouzin, 2008: 63). In another definition, "the commitment to engage in an act of legitimate origin" (Hassan, 1989: 10).

Another lawyer defines the obligation as "a commitment to the general meaning that a person under the contract or the law undertakes or refuses to do something. In a more complete definition, it has been said that "there is a legal relationship in which the person is obliged to transfer and surrender property or to do something else, whether it is the contractual relationship or the presence of an obligation" (Safai, 2013: 12).

According to the definitions set out in the obligation, the obligation can be defined as follows: "An obligation is a legal relationship (whether arising

from law or a contract), by virtue of which the oblige can pay money or property to execute or refuse doing the current task from the committed party and the obligated will be obliged to adhere to it."

Here we look at the legal effects that payment can bring. Obviously, the payment is intended to be legal and the law protects it.

Proof of Obligation

Article 265 of the Criminal Code states at the beginning of the discussion of fulfillment of the obligation: “If anyone gives property to another, it is deemed that he has not done so without consideration…”; therefore, if a person gives property to another, while he is under no obligation to do so, he can ask for the return of such property. In order to be able to determine who should shoulder the responsibility of payment (payout)? The answer to this question is that, at first, briefly, we examine the concept and nature of "fulfillment of the obligation," then analyze the effect of payment on the proof of obligation.

The fulfillment of the obligation in our law as the first cause of the discharge of obligations (264 Civil Code). The fulfillment of the obligation is the simplest and most common means of discharge of obligation, because in the endeavor of the due date, the parties of the contract achieved the commitment, and the task entrusted to it under the contract is performed, as the obligation is given, or transferred, and when done the action has been completed in accordance with the contract.

Some lawyers, in the belief that the word "pay" is used in the definition of payment in Persian instead of " fulfillment of the obligation " state “Payment is the fulfillment of the obligation, whether it is due to the contract and whether it comes from a legal incident and a crime and law, it means that there is no effect on the issue of payment" (Langroudi & Jafar, 2009: 685).

In the definition of the fulfillment of the obligation, it is said: "it is an act by which he undertakes what he has committed to in the contract" (Langroudi & Jafar, 2009: 685). It is clear from this definition that vow to the promise is a special obligation that is the source of the contract, that is to say, a vindication of a contract specific to the contractual obligations, in other words, the term "fulfillment" is specific to the fulfillment of the contractual obligation (Langroudi & Jafar, 2009: 14).

The definitions show the fulfillment of the obligation is meant and there is no difference in the cause of obligation either contractual or legal action (usurp, loss, conscription, etc.). Therefore, in defining the fulfillment of the

obligation, it can be said that fulfilling an obligation is an act by which the person undertakes what s/he has committed to in accordance with a legal act or a legal contract.

The clarification of the nature of the fulfillment of the obligation can reveal the reason for the differences between jurists and lawyers in Article 265. When discussing the nature of the matter, one should look for the answer to the question whether the fulfillment of the obligation required both committed parties consent or not, and so-called contract, or can the fulfillment of the obligation be fulfilled only with the committed will, and is it considered valid only in case of the presence of a contract? Is there anything other than contract or fact? There is a controversy between jurists and lawyers. Below we will look at and analyze each of the available perspectives.

1). The contractual nature of the fulfillment of the obligation

This theory, which is accepted by some Imamiyah jurisprudence as well as Iranian jurisprudence and French jurisprudence is followed by many and the most famous theory about the nature of the fulfillment of the obligation. This group believes that "the nature of the fulfillment of the obligation should be regarded as legal and contractual" (Safai, 2013: 235). Because, in legal practice, the effects created by the actions of individuals are determined by the will of those who create such and thus actions of the company are consistent and the individual wishes to conclude that effect on the action and in fact the will is based on such an outcome as a result of the action. Therefore, the theory of legal practice concerning the nature of the fulfillment of the obligation is based on this and requires the will and intention of both parties.

There are objections and criticisms to the theory of contractual nature of obligation, and some critics of contractual nature of obligation believe that sometimes the subject of the fulfillment of the obligation is in contract and requires the acceptance to conclude, such as in the case where the owner, by virtue of a vowel, pledges to sell his home to another and the buyer accepts the owner's commitment, in this case, the fulfillment of the obligation will be fulfilled with the occurrence of the application in the notary's office, but it is important to note that the parties consent cannot lead to dedication of the parties consent in the manner to fulfilling the obligation, the obligation should be fulfilled in a contract based on both parties consent, and thus the fulfillment of the obligation is a contract (Katouzian, 2008: 15).

In the legal system of countries following common law the implementation of the contractual obligation is described as "performance" and is defined as follows: "The performance of a contractual obligation means the performance of a promise of a contract or other contractual obligations which, according to the contract, is performed by a person who has the burden of liability and the effects of non-execution, if the commitment is not implemented" (Hossein, 2005: 235).

2). The accidental nature of the fulfillment of the obligation

According to this theory, the fulfillment of the obligation is realized only with the committed will and there is no need for obligatory voluntariness because, in the vow of the promise that is relevant, it is that the creditor will attain his will and by fulfilling the obligation of the committed. The result is therefore no longer required to be accepted, since fulfilling an obligation from the committed party does not only harm the creditor's rights, but also the ultimate goal and purpose of the parties to the fact, which is, in fact, the obligee to the creditor. Then it should be considered that one's duty is a unilateral legal act in which only the committed will is working and the creditor's will is no longer the case.

Some legal writers argue that if a committed party submits a commitment to the other party, the viability of the contract is fulfilled, although the actor does not intend to seek and accept the obligation, therefore, it is a pledge of a one-way legal action. By committing voluntarily a committed person or a person of a general obligation by a committed obligation, and for fulfilling it, only committed volition is sufficient and there is no need for interference with the creditor's will (Katouzian, 2008: 6), so if committed, without the intention to perform the obligation. The performed action cannot be considered as the fulfillment of the obligation and it has not materialized (Shahidi, 2010: 20).

3). Variability of the fulfillment of the obligation on the basis of nature and its contents

Another theory on the nature of the fulfillment of the obligation is that it varies depending on the nature and subject matter, because the subject of the fulfillment of the obligation can (property, action, or refusal of an action), which can, as the case may be, be in the form of a contract, or claim, or even a legal fact; some legal writers write in this regard: "... the simple fulfillment of an obligation is a legal fact that, in principle, there is no need for the parties to

engage in incitement, because it is realized by the influence of the contract or the contract itself, and the commitment is carried out, such as the fulfillment of the pledged obligation that is the result of the occurrence of a bet (contract) or a reciprocity in the conduct of a trade which enforces a contract, but if the fulfillment of a contract requires another legal act, its nature depends on its legal action. Consequently, if a legal act is performed, it is necessary to have a relationship with the obligation in order to fulfill the contract, if it is done exclusively with one will, and in other cases, when no will have an effect on its realization, thus it is called a legal fact" (Javanmardi, 2001: 53).

4). The nature of the fulfillment of the obligation as a legal fact

Some lawyers believe that the fulfillment of the obligation should be considered as a legal fact; in legal fact, contrary to legal practice, the effects created are not in accordance with the intent of the person, but these works are governed by law without the will of the parties to be carried out (Hussein, 2013: 20). In the fulfillment of the obligation, there is no need for the will of the parties to the obligation performance. Proponents of this theory have argued in support of this view; it is also possible to use the theory of the objection to the contractual nature of the fulfillment of the obligation to confirm this theory.

Ripert, the French lawyers, know the nature of the fulfillment of the obligation to be "contractual" inasmuch as it is possible to oblige a committed person to fulfill the obligation, and also the creditor in the obligation to accept the admission (Khoyi, 1977: 8). In the Swiss law, the tendency for more legal opinions is to remove the fulfillment of the obligation in the form of a contract and bring it closer to the legal fact; even some adherents of contract theory were convinced that, in an agreement between the creditor and the debtor, there are restrictions to freedom of decision (Katouzian, 2008: 17).

5). The mixed nature of the fulfillment of the obligation

One of the writers of French law known as "Nicole Catalan", inspired by Italian law criticized the theory of contractual nature of the fulfillment of the obligation in his famous book *"La nature juridque du Payement"*(Catala, 1961). Taking into account the mixed nature of the fulfillment of the obligation as a legal act and a legal fact, as well (Hossein, 2005: 236; Katouzian, 2008: 17). In the French law, often the fulfillment of the obligation is of a contractual nature, which owes its end to the obligation of allegiance; therefore, the debtor ought to have the

intention, but the creditor must accept it (Katouzin, 2008: 15). French lawyers argue for justifying their point of view: the fulfillment of the obligation is a mixed act that consists of material acts (such as payment of value or performing an act or withdrawing an act), and is an implied agreement between the parties, which is a legal seizure.

French lawyers are of the opinion that in this "mixed fact," nature of an agreement and a contract that is considered to be a legal practice, overcomes the material practice of the fulfillment of the obligation; hence, it should be considered legal practice, and concluded that the fulfillment of the obligation is the agreement between the parties making an obligation on payment, so that the obligate undertakes to submit to the subject of the obligation, and agrees and accepts the obligation that the contract is to be paid in accordance with the terms and conditions. Therefore, it is clear that the parties should be considered as the pillars of the fulfillment of the obligation; and thus, in order to fulfill the obligation, having a condition is a prerequisite (Javanmardi, 2001: 50-51). In the same vein, Farjavi, the French lawyer states in the definition and nature of the fulfillment of the obligation: " the fulfillment of the obligation is inherently a legal action that has a material element (giving the property or the conclusion of an act) and a contractual element (an agreement between the parties)" (Khoyi, 1977: 8). Another old French lawyer, called *"Beadant,"* takes the contractual nature of the fulfillment of the obligation: " the fulfillment of the obligation is a voluntary agreement that has the effect of right elimination" (Khoyi, 1977: 8).

In Egypt law, there is also a theory similar to the above theory, which makes the fulfillment of the obligation a mixed fact (Senhori, 1415: 357). Some Egyptian lawyers write: "The fulfillment of the obligation is a material practice, as well as an agreement on obligation that is a legal expropriation, and this element of legal seizure dominates in this mixed fact, and therefore, it is necessary to consider the viability of the obligation in the number of legal seizure and call it the intention of the writer. Accordingly, these lawyers called the fulfillment of the obligation as "objective legal seizure" (Senhori, 1415).

The fulfillment of the obligation in all its belongings and beliefs seems to be fixed in nature and sometimes in other ways, but one must know that there is no more fact because it is a commitment. Legal fact is not something else. As a result, playing in its essence does not require any will, and sometimes it requires a commitment to the committee will, the conditional state requires the commitment of the parties or one of them, not the essence of self-acting because the essence of the object itself cannot be detached. In other words, the difference between the issues of the fulfillment of the obligation is not vested in nature; the

source of the difference of the lawyers in this discussion is this; therefore, the nature of fulfillment of the obligation is separate and independent of its subject, and the difference in the implementation of its subject (the same being certain or the general nature of the obligation, the transfer of the right or property, the conduct or refusal to perform the obligation, etc.) does not change the nature of the viability of the contract and, as the case may be, does not change its nature to legal act, legal fact, or contract.

The discharge of an obligation

The main effect of the payment of obligation or is the discharge of the obligation. At this stage, when the commitment is fulfilled, the legal relationship between the party's flourishes and the goals of the parties are realized, and there is no longer any way to survive the commitment. The discharge of obligation in Iran civil law is based on contract materials and out-of-contract requirements. There is a combination of French civil law, the title of discharge of obligations, as well as a translation of the recent law (Siamak, 2005: 85).

The obligations in our law are discharged in one of the ways outlined in Article 264 of the Criminal Code, calling for the loss of commitment in our law to be "discharged", according to the inventory counted in Article 264. The use of this term (discharge of obligations) does not look right at all. In some of these cases, such as " the fulfillment of the obligation," the commitment is first "executed" and then eliminated, and the role of "execution" is much stronger than the role of elimination; because "implementation" completes the commitment; while " elimination " is a sign that it is inadequate. In some other cases, the obligation remains after the execution and is not discharged, such as the transfer of obligation (payment by a third party, the subject matter of Article 271). Therefore, it is only in the realization of some of these cases that it is possible to use the term "discharge" because the " discharge " has a negative meaning, indicating that the half-finished commitment has been done; therefore, "Mazo" Famous French lawmakers have spoken out of loyalty to the "implementation of the pledge". However, under Article 264 of the Obligation, "obligations" are imposed by way of the fulfillment of the obligation.

It has been said that Article 264 of the Civil Code has been adapted from Article 1234 of the French Civil Code; however, in French civil law, there are three other causes (the loss of a transaction good, the realization of a suspended sentence, and the timing of the conviction) and, instead of annulment, the

cancellation states that the failure to comply with its obligations is not stipulated in the country's law" (Shahidi, 2010: 18). In the new constitution of Egypt, the discharge of obligations has been counted as: "fulfillment, fulfillment in return, the transformation of commitment, truce, unity, lack of implementation, impossible fulfillment and passage of time" (Senhori, 1415: 157).

Conclusion

Article 265 of the Iran Civil Code explicitly refers to the transfer of property to another, and the explicit provision of the law is "to give property to another," not the terms of payment of money. The classical concept of property in the literature of our rights does not mean anything but a material object and a commodity of value and economic benefit, and never in the strict sense of the word, including money and commercial and credit documents, even in other legal systems such as England and France, the property in the above sense The propriety of the word, which has the Latin root and, it is clear by the definition given invalid dictionaries, such the term is semantically nothing but object and goods.

According to Article 265 of the Iran Civil Code, such a provision stipulates that if anyone gives property to another, it is deemed that he has not done so without consideration. Considering that in other laws referred to in the first chapter of Chapter 6 of the Civil Code, Article 265 itself is also part of the subject; the legislator explicitly refers to the property in a literal sense in several direct and indirect terms, including Articles 270- 278-279, he directly deals with objective assets, while in this section of the Civil Code there is no trace of the name of money and payments based on credit and commercial documents. What has been neglected among jurists in the interpretation of Article 265 of the Iran Civil Code and its adaptation to Article 1235 of the France Civil Code is to distinguish between "rendering property" and "paying money to another." Because this article does not say that anyone who gave a financial loan to someone appeared to have not given it a refund; so, he can repay it.

In fact, the cash is not to be attributed to a property or commodity, since in giving property of other seems to give borrower not to fulfill promise, and in case of cash it is better to take into account the circumstances and the condition governing the legal relationship between the parties and then deduce the case verdict. The result of this deduction is the "presumption juris tantum" that will persuade the conscientiousness of the judge.

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