

## RELATIONSHIP BETWEEN DOCTRINE OF CAUSATIONS AND CHANGE THEORY IN CONTRACT LAW

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### ABSTRACT

Doctrine of causations in law, means to take a pledge against others. Therefore, some experts believe that change theory is closely related to doctrine of causations and affected by doctrine of causations why change is something has made and given commitment. However, change we will discover by examining the content of change theory that the foundation and development of doctrine of causations distanced and is not retractable.

**Keywords:** *change theory, contract law*

### Introduction

As we know, a wise man, do not do to no purpose; motivation should be attractive to your will with conviction. The motivation, the theory is constitutes the causations theory. The parties to continue to undertake, to pursue different goals; the purpose of buying a home, an investment property can be obtained in banks and other finance is a particular need. However, none of these cases, the cause is not. It is due to reach its kind, the person has committed itself and "this is always one of the all individuals in instances of each type of contract that is to get something that the other party is obliged to surrender it (Shahidi, 2011: 333). The rights similar to English Dictionary ((change)) cover some aspects of this concept (Zimmermann, 2000: 553). This doctrine implies that an obligation, even if you seriously intend to be committed and be accepted shall not be binding. Unless you pay him something in return for this commitment, or committed to be paid or how to do it (Busch, 2002: 76), so in order have a similarity with the doctrine because the doctrine should also be examined.

### Causations theory

Causations theory is unknown concept in legal theory and legal writers paid less in this article, explores this idea other similar rights as the theory of scrutiny to be changed.

### The concept of causations theory

Causations literally means causes, triggers, pain and illness, motivation, excuses used (Saeidipour, 593; Amid 2011, 1261: 2). In other words, Causations something is going to happen soon, something else happen without delay and to be looking for something else to say disabled. For example, going to the composition, due to one or more of the same legal effect to say: "Between composition and its effect (source) an actual distance is not it."

Legally, due to the direct target for achieving it, the person has committed itself. For example, the performance of the obligation in the contract the parties to make a commitment, the reason is marriage. The goal is a goal is the type of people in these contracts (Jafari Langroodi 1386, 466). As stated purpose of immediate and direct result of the commitment to make the commitment, so when committed eagerness to reach that goal, your time was will not have any burden of commitment. Thus, the relationship between cause and commitment so that wherever there is no reason, no obligation and has no legal effect (Imami 1355, 219: 1; Bahrami Ahmadi, 2011, 302).

Causations, the definition of theory, it should be noted that due to the cause, the ultimate cause is the cause in the sense of its agent. From a legal perspective, due to into the following types:

1) Causations of the subject: because in this sense, refers to something that other things are equal, and its lack of object (Khandan, 1384: 166);

In other words, because in this sense is the creator and author of their disabilities. In this kind of cause can be separated from each other following two types:

A) contract due to: clear or legislation, is due to put something else; as contracts based on state legislation, because possession is placed.

B) Natural cause: in nature, due to the presence or absence of something; severe cold due to frost 2) The ultimate cause, the final cause, purpose or form of an action or issue. Which consists of two parts: the cause of a (direct) and personal reasons (indirect). For example, the cause or object of the seller, possession of illegal proceeds and her devious purpose of receipt of the price, buy a home (Jafari Langroodi 11, 1363). According to the definition of the concept was introduced because at the beginning of this article, the concept of efficient cause of this theory is not true. In this theory, we are looking to discover the intention of the parties to a contract. In other words, understanding the ultimate cause them to take commitment, not to discover the cause of their commitment. French lawyers argue, any contractual agreement exists has a cause; for anyone who is committed and takes on debt, in order to achieve immediate and direct purpose of which is the result and it means, cause is commitments. The theory, derived from Roman law. In Roman law that contracts are honored to be recognized for it and make a commitment, you must be a reason (Imami 1355, 218: 1). Cause to the different types of contracts cause to the contract depends legal nature and because each type of contract is a special legal nature, that each type of contract contains specific cause (Imami 1355, 219: 1), but of contracts, as is the cause; ie contracts that have the same legal nature, the cause is the same. So, although the contracts cause, the cause of the swap contracts vary but in a series of swap contracts, because, as is likewise set contracts (Bahram Ahmadi in 2011, 302- 303).

## **Opponents and supporters of causations theory**

### **The reasons for opposition**

Causations theory criticized by some scholars. The most famous of these opponents, Planiol was French famous lawyer. Skeptics reasons are as follows:

1. theory of the cause: the swap contracts, the commitment of a hand, cannot cause the other party is committed; because logically, must precede the cause or causes is disabled and has two obligations, one of cause and effect cannot occur together.

It is also alleged that the commitment of either party, the other party's commitment to the cause and effect returns us to a vicious circle Planiol, "Traité élémentaire de droit civil", Volume 2, N), 1037 quoted Katouzian, 241: 2000)

At a bare contracts due to commitments wants forgiveness, because it cannot be considered illegitimate and immoral and that the contract was canceled. If we want to give ruling on the invalidity of a contract due to an illegitimate reason, we need to search the ends and sides medicines and due to this type of contract is not separate from the intentions and Medicines (See: Safai, 1350: 53).

2. By advantage of the theory of the cause: the cause of the commitment, artificial and synthetic and analytic terms, other theories, such as Reza, will, subject to contract, could be an alternative theory of the cause. In swap contracts, because it is the obligation of the other party due to commitments, If the obligation is due to the commitment of one party without the other party without subject and thus would be wrong, so you do not need to because of lack of cause, declare the contract void.

Contracts giving equal lack of will and lack of will, lack of planning alone is insufficient for invalidity of the transaction (cf. *ibid.*). In other words, the intention of forgiveness is in fact the same donor consent, as the cause should not be interpreted. Marriage as a gift, it is illusory to imagine because, in this contract only element of consent and the rule there will not be another (Javan, 1327: 123)

3. Interpret due to incorrect theory: the theory of cause has its roots in Roman law, but today, this theory is based on misinterpretation; the reason the Romans within the meaning of the (cause of) women used agent. In Roman law constitute the existence of special formats, as "specific contracts" were necessary because it was called that. Romans also in action against the individual who filed the use of undue

rubbing, so-called because the women used; in this case, a victim of his own to stake a claim could withdraw) Marty et Reynaud, *Droit Civil*, 1962: N 174 to the Katouzian, 241: 2000 and Safaee, 52: 1350). The second theory provides the historical root of this word is quite different; he stated in its opinion that the obligation of a party, due to commitments with his other hand. While the meaning of the cause of his Roman inconsistent with the concept. In Roman law, a contract can only be used in certain contracts to be valid and there was no other operating requirements; secondly, if there due to commitments as well as a condition called essential contract basis (Katouzian, 240: 2000).

### **Supporters**

1. Causations theory is right: the theory of the opposition because it requires knew vicious circle. However, it is noted that the swap contract arises when the bugs away for the cause, because the subject is not the ultimate cause. If it is due to consider the meaning of the subject, it is clear that two things occur at the same time, not one of them could be the cause of another author; for that reason the former should be disabled. But if the cause be considered in its ultimate meaning, criticizes not be entered; because there is no prohibition and one side to the other side for the achievement of the advantages of having committed themselves. Also bare in the contract is not valid to want to forgive pointless and we have no legal value; for this is going to be an important factor to distinguish between the types of contracts, the contracts are exchanged. Without the intention of giving contracts there will be a bare and free of charge (Safai, 55, 1350)

2. usefulness of causations theory: the theory of the cause are considered as opponents, not useless; why the acceptance of this theory, to maintain balance in the exchange and the correlation between the mutual obligations and thus it is possible to terminate the contract, in case of loss justified the commitment (Katouzian, 246: 2000)

Opponents believe that in the absence due to a commitment on the one hand, on the other hand lacks commitment is subject; the contract can be canceled on the basis of lack of subject matter and not because of lack of cause. Such a right why should the opposition do not express a lack of commitment within one of the parties, nullity of marriage and consequently the loss of the other party to have commitment. At the conclusion of the contract, if the subject does not exist, the contract is void. But if the conclusion of the contract but implemented correctly, it is practically impossible to achieve, based on the theory of the cause, the contract becomes void. Only theory may explain why the issue is, if there is no mutual obligations due to lack of commitment within one of the parties, could lead to the loss of the other party's commitment (Shahidi, 2011: 360). In countries where the cause has been identified theory, the principle of solidarity obligations have been replaced; in fact, those who deny the utility of the theory of the cause, the result of that they accept it without a name (Safai, 1350: 56). At bare contracts, even though some observers, due to commitments, the intention is to forgive it should be noted and the purpose of the plan will bring forgiveness here, but the purpose is that the person making the determination that the owner will want the other party to the contract. In other words, the owner of the other side, the main reason is that donor commitment to the intent of forgiveness and will be separated and it seems that in using the term loosely fit, enter this objection (Imami, 2002: 226)

3. Because of the accuracy of the interpretation of the theory: Although the theory of reason throughout history in other meanings have been used, but this is no reason to forget affirms some of the criticisms in this regard. Skip to Roman law meaning as the cause of the efficient cause, to exclude the right of the view does not seem correct date and there are no barriers to church or a set of common rights lawyers such as time, such a theory are provided. Even if the name of his new theory of the cause lay in other words, that as a term or rights could be at different times, find new meanings, it is not far-fetched (Katouzian, 2000: 245).

### **Change theory:**

One of England's doctrine that the rights contracts have been discussed a lot of lawyers and their books are discussed in theory be changed and compared with the theory that the cause was introduced in some European countries are widely instead of the sixteen century as a theory in English law were discussed.

This theory, the old axiom (object against the object adapted to its authors ((Deal against exchange)) and ((commitment against the committed) 9 and the like are defined.

### **The concept of change theory**

Change, what is being exchanged, the commitment given (Rah Peik 1376, 47) and, as previously mentioned in the discussion of the theory of cause, any legal action that is done and the commitment to achieve to "bitch," which changed the purpose of its immediate legal action. The immediate purpose, the "cause" is in the dictionary Common Law "Change" is called and, as mentioned, due to the specific embodiment, the contracts are exchanged (Bahram Ahmadi 2011, 312). For a better expression, Change, the economic argument is that only the face of the material and the kind of commitment may have encouraged monetary aspects, such as the agricultural willing to commit to provide an herbicide, pay 20 thousand Toman. That subject cheer gives up the goods or provide services due to encourage engagement, what gives him committed, mutually to encourage creditor, takes commitment. This encouraged the swap contracts, two-sided. In common law, anything that is committed to encouraging creditors to accept the commitment pays off, consider instead. Change, based on theory or transaction, as long as the creditor did not owe something to the commitment, the commitment is seen as flawed and have no legal influence; in other words, the need to change contract (Ansari 2011, 317: 318). So, instead, is an act of retaliation committed by the crushing takes place (Rah Peik 1376, 48) and may benefit or compensation for a commitment on the obligation is crushed (or something else of a mutual commitment and dedication, a deadline , create, amend or repeal a legal relationship) (Rah Peik 1376, 47).

### **The relationship between theory and cause**

Some legal experts believe that the English word content rather than theory, according to the theory of the cause has been trading close relationship exists between the two; in other words, instead of as an internal model of the theory of cause and raised by the theory have been the cause. As previously mentioned, the commitment of the (theoretical reason), a condition of validity of the transaction in French law and in fact, is an integral part of the contract. When a person undertakes to provide, due to commitments in direct and immediate motive for the conclusion of such a contract and this motives, the obligation in the contract is justified. Because of a commutative contracts, in fact, the "mutual exchange" in the "theory of change" because in commutative contracts. what is the individual's commitment, mutual exchange and use it as a "cause or reason," the "cause theory" is explored.

In both of these ideas, commitment is concerned, meaning that in theory cause, have called for the purpose of accepting the obligation to find and the purpose of the contract nor accept similarly, in theory. In addition, what is checked, the same commitment in this regard does not matter what we call it, "Commitment", "due to commitments," "the pledge" and ... all to induce the same meaning. So, as the theory of the cause, the obligations of personal motivation individually; instead, the motivation will not be entered in English law and is merely a commitment to care obligations, regardless of the reason there is such a bitch, what was the motive. In addition, as due to commitments in the same swap contracts and by altering the parties to the contract does not change; also changed where it arises simply swap contracts, swap contracts in different types, will have the same meaning. Early English law, and the courts are not binding commitments in principle required to perform all the obligations were not correct, for this purpose, the court expressed a view that is based on mutual commitment. In other words, for which there is a binding contract, it is essential that the individual commitment, there is something that is valuable in the eyes of the law. Perhaps that is why some so-called "cause" in the sense of "change" is used. On the other hand, the above view has been questioned;

Because the difference between the two theories, the formation of the two, because in the eyes of French law, due process and a commitment to binding, the reason is that people should be required to fulfill their obligations and the ritual of grant contracts. In order to support the people who have charitable intentions and the obligation it would be unfair. This commitment is without cause, shall be excluded from support. On the other hand, in English law, the principle of non-commitment and the courts have created a rule according to which, generally binding commitments not and excluding the existence of such a rule to

change or have considered doing some formalities (Shariat 2011, 38- 50). As a result, although the result of the two theories, the lack of enforcement of commitment and gratuitous or without cause, but differ in terms basis. In theory, cause or reason, the purpose of the benefit is the person committed his income. However, change, in theory, the contrary is the case, the change in fact, losses and liabilities which are crushed, committed to the obligation imposed (Rah Peik 1376, 49). It should be noted that, among the three perspectives in the theory of cause (a person, kind, mixed), the idea of some kind of reason, that look the same material as a result, the major similarity with change theory.

However, sometimes instead of theory, applied in cases where there is no economic confrontation. The latter, in some cases, changes in obligations recognized that these obligations, the obligation not swap transactions; but the court because changes in such contracts are recognized that such a commitment binding is detected. However, the theory of the cause in the form of a vision is a vision and purely economic theory (Shariat 2011, 47). Perhaps for this reason that some lawyers have said: "The theory of the cause or form of the Roman law - German forth, in the common law is not discussed" (Rah Peik 1376, 26).

### Conclusion

1. Cause theory in rights, due to take pledge against others and for the cause, teleology not cause of the subject means that the concept of cause is always the same in a type of contract but for personal or cause it to motivation and closer motive.
2. Despite the objections raised on the theory that the cause of the error, the futility and false interpretation. However, closer examination we find that the reasons presented the pros and opposition wrong and not based on credible evidence.
3. Change theory suggests that a contract is a contract in place to achieve that objective instead of its immediate legal action and the purpose is called common law. Of course, the conclusion that the lawyers were not important change theory because the character of a theory cannot be changed while applying the change theory leads some contracts without describing their commitment.
4. Although the wind change theory in the same cause doctrine they knew but we will investigate the cause of the distinction doctrine in change theory and differ in terms of basis because in common law instead of applying the theory to the lack of necessary knowledge now the acts of cause doctrine it is based on the principle while the purpose of the cause for the rejection is cause doctrine and commitment is the person in front of her income, but change theory is rather the opposite.

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