



## A Study on the Sale Loss Rule in when having Cancellation Right in Iranian Law and Shiite Jurisprudence

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### ABSTRACT

*The juridical law "loss at the time of the optionality for those who do not have option" means that if the property is wasted during the time one of the parties has the right to terminate the transaction, the property belongs to whom he does not have the option and the right to cancel the transaction. The Iranian legislator has also accepted this rule of outsold waste and has included it in Article 453 of Civil Code. Since there are doubts in this legal regulation and principle, a comprehensive research was required that has been done in this study as much as possible. This rule is contrary to the requirements of ownership and in the interpretation of the rule, the certainty extent should be sufficed. The jurists, to justify this rule, argue that the one who is not the owner of the property is not responsible for the waste, therefore, if a moment before the wastage, sale transaction is cancelled and it becomes a property of the seller, the wastage belongs to the owner, same as the rule of the outsold waste before seizure. Some jurists consider it as the continuance of exchange guarantee before seizure. Regarding the jurisprudence principles in the article 453 of civil law, it should be noted that if one of the parties in a transaction has one of the council, condition, or animal options, and the other party does not have any cancellation right, and the outsold is wasted, it would belong to the one with no cancellation right. Another finding of the current study is that if the subject of the transaction is general outsold, the principle does not apply. Also, the waste principle in the optionality time does not apply to the wastage price.*

**Keywords:** waste rule, wastage, outsold, sale, optionality time, cancellation

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### INTRODUCTION

One of the principles discussed in the jurisprudence book is the rule of sale wastage before the optionality time. Since there is a principle in these books that is seemingly contrary to this subject and the ownership exchange just in case of acceptance and requirement. As this principle asserts, whenever in the sale transaction, the sold is wasted without any assault or negligence, after the seizure and before the expiry of the optionality specific to one of the parties of transaction, the guarantee is on the one who has no optionality.

The basis of this principle is the narrations existing in this regard such as the narration of Morsal Ibn Rebat from Imam Sadeq (pbuh) who sated:

If something happens to the animal before three days, it belongs to the seller. Here, regarding that in animal sale, the buyer is granted cancellation right before three days, if there is any harm to the animal during this time, the seller, who has not the cancellation right, must compensate.

The Iranian legislator in terms of allocation of the principle to the three options in the article 453 of civil code, has accepted the ideas of Sheikh Ansari and requires that whenever there is the animal optionality, condition optionality, or council optionality in a sale, and this is specific to the buyer, and the sold is wasted or harmed during optionality time, this harm belong to the seller.

In terms of conformity of the contents of this rule with the bases and principles or it does not conform, most of the jurists as

stated that the mentioned sentence is to the contrary of the initial rules and principles and except for the ownership principle, the buyer is on the transaction itself as well as the requirement and acceptance, since the property which has been sold and seized by the buyer, belongs to the owner (which is the buyer) and according to this rule, it belongs to the previous owner (which is the seller). However, due to worship, we accept this contradiction to the principle and action it and it should be limited to the cases which are certain.

In terms of the possibility of this principle's contents application to all of the optionality or it can be just applied to the animal optionality, there are some theories:

- a) The sentence can be applied for all the optionality.
- b) It just belongs to the animal optionality since just this type of optionality has been mentioned in the narrations.
- c) About the principle is specific of the buyer optionality, or it also includes the seller optionality, there are two theories and they are both based on the fact that we consider the contents of this principle contrary to the principle or conforming to it.

Does the mentioned principle belong to the sold wastage or the price harm during the cancellation time is on the buyer who has not the cancellation right if only the seller has this right? Do the price and the sold have any differences in this regard and the rule apply to the exchanged properties, or it is just specific to the sold wastage? Some scholars such as Sheikh Ansari doubt the application of this principle to the price and state that due to generalization and inclusion of the principle, it also includes the price (ibid), since the cause of the guarantee "who has not the right of cancellation" is faltering the sale, so with a good

proportionality, the sentence and subject can be also applied for the price (Khoei, 1414) and it is the establishment of ownership that lead to wastage guarantee on the owner and as long as the ownership is faltering, the guarantee is not on him neither from the seller side, nor from the buyer and the guarantee is on the first owner who does not have optionality. Similarly, we can use Estesahab principle for the buyer guarantee who has been proven before the seizure according to the sold wastage and consider the buyer as the guarantee of the price harm (Ansari, 1420).

#### Does the Principle Also Include the Price Harm?

Some jurists believe that this principle also includes the price harm (Emami, 1992).

Dr. Katuzian believes that the mentioned principle on the price harm is not applied for the price harm (Katuzian, 1988) since there is no reason this principle is related to the price and since the contents of this principle is on the contrary to the rule and also the news are allocated to the sold, the certain case which is the price harm should be sufficed (Tabatabayi Yazdi, 1999). Some people also, such as Imam Khomeini believe that it is possible that this principle is approved for the price when it is animal. Therefore, if someone sell an animal for the goods or another animal, the optionality apply to the animal owner, be it seller or buyer, and also it is possible in this case the guarantee is on the one who has not the cancellation right because both the animal owner is right for the seller and the seller and buyer are right for both of them. Make it short, the proof of this principle is totally possible for the animal owner, be it seller or buyer and the animal damage will belong to the one who has not the cancellation right, however the proof of this principle for the price if it is not an animal, is doubted, and even banned (Khomeini, 1989).

Sheikh Ansari in Makaseb Book: it is possible to say that the mentioned principle is generalized and includes the price harm in the optionality specific to the seller, i.e. if the price in the seller hand and during his specific optionality duration is wasted, this wastage belongs to the buyer and there are two reason for it:

- a) The "Sahihah" of Ibn Sanan is used in which the focus in obviating the guarantee form the seller is that by the expiry of the optionality time, the sold belongs to the buyer and is allocated to hem in a way he cannot deprive himself from it, and this focus also includes the mentioned subject in a way we can say that the focus in the guarantee obviation from the buyer to him which by expiry of the optionality time, the price belongs to the seller and is allocated to him in a way he cannot deprive himself from it. Therefore, before the optionality expiry, since there is no such an ownership is obtained for the seller, the price harm in his hands belong to the buyer who has not the right to cancel the transaction.

This reason is doubted since:

- a) The narrations are about the sold and we have "the sold becomes the buyer's".
- b) The reason behind the existence of what was said is not clear and if we assume it is the reason, the focus or reason of guarantee obviation from the seller, as it is mentioned in narration, is that the established ownership is created for the buyer on the sold and not when the sale is required. The difference between the two is very clear (Esfahani, 1418).

B) Before the seizure of the price by the seller, the buyer guaranteed the price, i.e. if the price is wasted in his hands, he should have coped with it. Now after the seizure of the price and

the optionality time specific to the seller, if we doubt whether the buyer guarantee on the price still remains or not?

The Esteshab sentence the current guarantee survival and buyer guarantee. It may be said that according to the principle, everybody is guarantor for his own property and nobody guarantees what is wasted in the property of its owner and the only exception is the wastage before seizure, however the other cases such as the price harm after seizure and during the time of buyer-specific optionality remains under the mentioned principle. Therefore, in the mentioned assumption, the buyer should not guarantee the price harm and according to this principle, which is taken as the reason, the Esteshab principle for the buyer guarantee survival does not count (Chahkandi Nejad, 2009).

#### Does the Principle Apply to the General Sold Property?

Among the other subjects that can be discussed is the generalization of the principle to the general sold in the disclosure. For example, if the subject of the sale is a car in general, and after the seizure by the buyer and when he has the cancellation right, the sold property is wasted, still the principle applies? If the applicable is a general property which has been delivered is taken as the same as certain, and we assume the wastage principle applicable to it, the wasted car guarantee belongs to the seller and the transaction is cancelled and he should return the paid price to the buyer.

Some believe that there are no difference between the general and certain sold, after the determination of the applicable and seizure and the general sold after seizure is the same as the case in which the sold was determined from the first time, therefore the guarantee is on the seller and with the wastage, the transaction is cancelled and the ownership returns to the owner and the seller should also return the price (Irwani, 1986).

On the other hand, some believe that in the principle case, the sold is the same as the certain since it is in this case that wastage and non-wastage apply and wastage in the general property is meaningless and the applicable is given to the seizure even though it van be wasted, it is not the sold and the sold which is general cannot be wasted ad the principle cannot be applied (Makasib) and as it is only the case for the same as certain sold, the wastage before seizure leads to cancellation (Ansari, 1420).

It seems regarding the non-conformity of this principle with the rule and suffice to certain, in which the sold is the same as certain, the second theory must be accepted and in the general sold for which there is no need to apply the principle, we should not assume the principle applicable and put the property wastage guarantee on the owner (Khomeini, 1410).

#### Does this Principle Include the Wastage?

Definitely, this principle is just applicable in the case of the sold divine wastage since the narrations refuse the divine wastage in a way if the sold is spontaneously and by the natural disasters and without abuse or negligence, is wasted such as the case the animal is eaten by a wild animal or is dead due to illness, or fall down off a height, the principle "wastage during the time of optionality for whom he does not have a cancellation right" is applied and the wastage belongs to the seller who does not have cancellation right (Mostafavi, 1425).

#### The Concept of Wastage in the Principle

It seems by wastage in the mentioned principle, the wastage by the heavenly pesticides and external incident is meant and it does not include the wastage by the parties or the third party since in the narrations, the term "wastage" is mentioned which is different from the concept of dissipation. The wastage is elimination of an object due to natural disasters and the wastage by human is called "dissipation" (Ansari, 1420).

Therefore, if the cancellation right holder wastes the property, this right is abandoned due to this wastage and the contract is necessary and if the harm is done by the other party or a third-party, the cancellation right remains and he is optional to either cancel the sale or refer to the seller for obtaining the price or the sold alike (Katuzian, 1997).

It should be noted that some jurists, about the sold wastage by the third-party or even the seller, also apply the principle due to generalization of the term "wastage" to the "dissipation" (Tousi, 2008).

However, most of the jurists do not consider it correct and only apply the principle to the heavenly loss.

### **The Meaning of the Guarantee in the Principle**

The jurists suggest that by the guarantee in the principle, the proven guarantee before seizure is meant which leads to the transaction cancellation a moment before wastage and after the seizure in the time of triple cancellation rights also, if the sold is wasted, it is included in the seller property before the wastage and then the contract is cancelled. By this interpretation, the principle on the contrary to the ownership in which the wastage belongs to the owner does not count, since we assume the property is in the buyer's property a moment before wastage and it is wasted under his ownership (Ansari, 1420).

However, some scholars such as Allameh has expressed that if the sold is wasted during the cancellation right time, if it is before seizure, the sale is cancelled and if after it, the sale is not cancelled. Therefore, the cancellation right is also not cancelled and the buyer can refer to the seller for the price or the sold alike and the meaning of the guarantee in principle is also the same (Allameh Helli, 2011).

The difference between these two ideas is that if we accept the cancellation, the cancellation right holder must refer to the one who does not have the cancellation right in order to get the price, while we do not mean cancellation, he should refer to the alike or the price which may be way different from the contract price.

The most accepted idea is the contract cancellation since some consider it as the continuance of the exchange guarantee of the sold wastage before the seizure which undoubtedly leads to cancellation.

As was mentioned, this principle is on the contrary to the rule and principle of ownership in which the wastage belongs to the owner and due to this, the jurists, by accepting the contract cancellation and returning to the seller's property a moment before wastage, have tried to justify it. Therefore, it is better to accept the cancellation and generalize the guarantee meaning to the contract cancellation in a way it does not oppose this principle, so the property wastage is done in the owner's hand and the damage is not upon someone else (Tabrizi).

**Another point in the mentioned principle is that what is meant by "whom he does not have the cancellation right"?**

It means is the guarantee upon the one who does not have the cancellation right when he does not have any rights to cancel the contract and the sale is completely established from his side, or by the cancellation right and optionality, we mean only the triple rights as the condition, council, and animal?

For example, if a contract is made and in this contract, a three-day cancellation right was given to the buyer, but after the seizure of the price, there was a problem with the price and the seller is also given the cancellation right, he is no longer the "one who does not have the cancellation right" and the guarantee for the sold wastage is not upon him or, we say although the seller has the cancellation right, it is not included in the triple cancellation rights and the seller is taken as the one who does not have the cancellation right and the wastage is upon him.

It might be said that since the requirement for the sale cancellation from the wastage is that there is no ground for application of cancellation right, and holding the cancellation right by the seller is opposed to the contract cancellation, we must take the "one who does not have cancellation right" as someone who does not have any kinds of cancellation rights (Shirzai, 1412).

But it seems the reason is reversible since it can be said after the sold is wasted, such as the case for wastage before seizure in which the sale is cancelled and consequently the cancellation right is also cancelled, here also, by cancellation of the transaction, the cancellation right is cancelled and there would be no contradiction. In this case also the guarantee is upon the one who does not have cancellation right.

Even if we do not accept the cancellation of optionality, it can be said that the guarantee of the one who does not have the cancellation right does not lead to the sale cancellation, but with guaranteeing, we mean the price and the alike guarantee and the sold wastage is upon him and he can cancel the deal base on the cancellation rights and give the price while he does not have the right to get the alike or the price of the sold property of which he guaranteed its wastage, same as when the buyer himself can initially refer to the seller to receive the sold alike or its price (Shirzai, 1412).

But it does not seem correct since most jurists and their ideas know "the one who does not have the cancellation right" as a person who does not have any kinds of cancellation right (Shirzai, 1412).

And as it was mentioned, about the principle, the certain extent must be sufficed and the certain extent is when the guarantee is upon the person who does not have any cancellation rights and if the buyer has the right to cancel the deal based on the cancellation right condition and the seller has also this right based on cheating or defect or any other cancellation rights, he is not the one who does not have the cancellation right and would not be the guarantor of the sold wastage (Tabatabayi, Khosro Abadi, 2010).

### **The Generalization of the Principle to the "Abscess Warranty"**

Another jurisprudence principle is abscess warranty. It means the benefits of any material belongs to the one who guarantees it and the one responsible for its damage is also responsible for its advantages.

However, this principle only includes especial cases in which based on a correct sale, a person guarantees the cancellation right or he becomes the guarantor of an object such as the case in which the buyer is wastage guarantor in a condition sale while having the cancellation right and if the sold has any advantages, it belongs to him who guarantees it. However, people such as usurper, even though being the guarantor for the object and wastage, does not own the benefits (Makarem, 1411).

By guarantee, we mean spurious or optional guarantee, i.e. paying back the return and not the obligatory guarantee such as the usurper and also the narrations confirm it in terms of cancellation right condition and the fact that advantage conforms to the ownership and the property damage is upon the owner (Khomeini, 1410).

The principle can be meant differently, i.e. everybody is the owner of the property benefits even if he is not the real owner such as the tenant in a rent and ... and he is also the guarantor for its wastage which is opposed to the narrations and the stronger idea is that the abscess warranty is an emphasis on the ownership rules which considers the benefits for the owner of the property and since he is the guarantor for the real wastage, the benefits also belong to him (Yazdi, 1410).

Now, as was mentioned, by the contract, the ownership is obtained and cancellation right just falter this ownership. The benefits belong to the owner and other effects of ownership also apply and the wastage is also upon the owner. However, in the cases in which the triple cancellation rights are specific to one of the parties, the guarantee is upon the other property and not the owner. But is the other party who is the wastage guarantor benefited according to the abscess warranty principle? Or this principle does not apply in the sold wastage principle in cancellation right and the benefits remain for the owner?

It seems the abscess warranty does not apply in all the cases of guarantee and is allocated by the wastage principle in cancellation right (Nayini, 1994).

Such as the case that can be said according to the rule, one moment before the sold wastage, it is transferred to the one who does not have cancellation right and based on this, the wastage is upon him and the sale is not cancelled and the cancellation does not apply to the past, the benefits also remain for the owner and even if we run the abscess warranty on the wastage principle, it is not effective and the benefits remain for the owner (Yazdi, 1410).

As was mentioned, the guarantee meaning fake and optional guarantee such as paying the price is correct in the contract and does not include the guarantee in the wastage principle when having the cancellation right since the abscess warranty emphasizes on the rules and principles of ownership and does not include coercive and non-contractual guarantees.

The Judicial Procedure for the Sold Wastage Principle while having the Cancellation Right

The Iranian legislator in the article 453 of the civil code states: "In the council, animal, and condition cancellation right, if the sold is defected or wasted after seizure and in the time of cancellation right, it is upon the buyer and if he has the cancellation right, the defection belongs to the seller".

Regarding what was mentioned about the principle, the legislator has also accepted the jurists ideas on acceptance of the council, animal, and condition cancellation right and does not

consider the principle for other cancellation rights. The appearance of the legislator's expression is in a way that does not include the price of wastage (Katuzian, 1997).

Some scholars have argued that the difference between the price and the sold is credit, so in terms of the unity, the application of the contents of the article 453 can be also accepted for the price (Emami, 1992).

However, as was mentioned, regarding the uniqueness of the principle and the narrations that only cover the sold, the certain extent must be sufficed and it is better not to apply the article for the price as the clear term "buyer" affirms this idea. The difference between the price and what has been paid for is also not credit and from the viewpoint of the jurists, the price and what has been paid for (the sold property) are different which is beyond the scope of the current study.

Another important point is that the legislator has not mentioned the application of the principle in the general sold in disclosure, so regarding what was mentioned, it seems we should not apply the principle and legal article for the cases in which the general sold is in disclosure.

Another matter ignored in this article and we have to refer jurisprudence, is that if the triple cancellation rights belong to the buyer, and the seller also have rights such as defect, or delay in payment, does the principle apply?

In this regard also it seems due to uniqueness of the principle and sufficing the certain extent and what have been mentioned so far, we should accept not to apply the contents of the article and put the wastage upon the seller although the appearance of the article does not convey this meaning and the subject of the article is the triple cancellation rights and allocating them to the buyer, regardless of the other party and seller has other rights or has not and due to this, the legislator is under question in terms of attention and expression of the principle since the interpretation and simplified explanation of the principle is "if one of the parties has one of the council, animal, or condition cancellation rights and the other party does not have any cancellation rights, he is the guarantor of the wastage" and not "if one of the two parties has the triple cancellation rights is not the guarantor of the wastage". As it is mentioned in the article 453 of the civil law, and as it was mentioned that by "the one who does not have cancellation right" we mean the one who does not have any kinds of rights and he has established the sale, therefore, if the seller also has the contract cancellation right, the wastage guarantee must not be upon him.

The last point is that although the legislator has not clearly noted that by the sold wastage in the cancellation right time specific to the buyer, the contract is cancelled and also by the seller guarantee, it is meant the same, regarding the basis of what was mentioned such as the guarantee that is the continuance of the exchanged guarantee before the seizure which leads to the sale cancellation, here we also should accept the sale cancellation a moment before wastage in the time of cancellation right (Tabatabayi, Khosroabadi, 2010).

#### **The Opposition of the Sale Contract Possessiveness to Wastage Principle in the Time of Cancellation Right:**

If the sold is determined, the contract transfers the possession. According to the article 339 and 362 of the civil law, in the time of contract establishment, the time of necessity and acceptance, and the time of possession transferring of the exchange, are the same time of the contract establishment. Due to this reason, the

Paragraph 1 of Article 362 of civil law express that: "as soon as the contract is established, the buyer becomes the owner of the property and the seller of the price" and also it was said that even the existence of the cancellation right in the sale contract did not prevent this transference and opposed to the ideas of the minority of the jurists who consider the ownership transference time as the expiry of the cancellation right, the civil law in the article 364 follows the famous idea and has put: "in the cancellation right sale the ownership starts with the sale contract and not with the expiry of the cancellation right...".

Therefore, it can be seen that the existence of cancellation right in the sale contract does not intervene the transference of the ownership from the seller to the buyer and as soon as the contract is finalized, the property benefits, from the time of contract to the time of seizure, belongs to the buyer. Also, the seizure of the property does not affect the ownership transference at all and its only effect is that it transfers the exchange guarantee from the seller to the buyer and by seizure, the conventional responsibility of the seller ends (Maghsudi, 2016).

Since the cancellation right sale also leads to the ownership transference and the fact that by the seizure of the sold, the exchange guarantee also transfers to the optionality, so according to the principle "wasting any property belongs to the owner", where someone's property is wasted after seizure, it is upon the buyer and belongs to his property. The legislator, contrary to those principles (the possessiveness of the sale contract and the exchange guarantee transference), has made a unique sentence in the article 453 of civil law through which the exchange guarantee of the seller still remains after the seizure and in the time of cancellation right specific to the buyer.

#### **The Determination of Contradiction of Wastage in Cancellation Right with the two other Principles and rejecting it**

In the issue of the sold wastage when having the cancellation right, according to the principle "wastage when having cancellation right belongs to the one who does not have the cancellation right" it was mentioned that the wastage damage belongs to the one who does not have cancellation right. After recording the issue and proving that by the narrations, we faced some limitations and we will; one of the limitations which was mentioned before was that if the principle "wastage when having the cancellation right belongs to the one who does not have the cancellation right" is correct, it is opposed to two principles, one is that "the wastage is upon the owner" (Tabatabayi Yazdi, 1998), i.e. any property that is wasted belongs to the owner. Here, the property belongs to the buyer and it is wasted, but the seller is guarantor. This principle is opposed to the mentioned principle. The abscess guarantee principle is also opposed to the mentioned principle (Najafi, 1983). The abscess guarantee means that a person is guarantor who owns the property benefit and outcome, so the property belongs to a person and guarantee is upon on someone else which oppose the mentioned guarantee; this principle argues that a person is the property guarantor who enjoys the outcome and benefits of it.

In the previous section, it was discussed that according to the cancellation the Sheikh and alike believe, both principles are correct, i.e. the wastage when having the cancellation right lead to the cancellation of the contract and when it is cancelled the sold is returned to the seller property and when it is his property, the principle stating that every wasted property belongs to the guarantor conforms to the mentioned principle.

Also the principle that mentions abscess guarantee conforms to it since when he owns the property, the benefits and damages of the property also belong to him (Ansari, 1420).

#### **The Contradiction of the Wastage when having Cancellation Right with Wastage before Seizure and Cancellation Right of Seller**

What is presented here is that the principle "wastage when having cancellation right belongs to the one who does not have the cancellation right" is sometimes integrated with another principle and also opposes to it.

What was mentioned is that this principle is basically opposed to the two general principle, but what is presented here is that this principle "wastage when having cancellation right" sometimes by integrating with some other principles, is also opposed to them, e.g. if a property is wasted before seizure, a carpet is sold by a seller and it not seized yet, in this deal, because the seizure is not the condition, it is not correct and also the ownership is transferred to the buyer, since it is the buyer's property now and it is not seized, during this time, seller has no cancellation right and not the buyer (Naraghi, 1419).

"The seller is guarantor according to the principle wastage when having cancellation right belongs to the one who does not have the cancellation right; since the buyer has no cancellation right and the seller has the cancellation right. Because of contradiction between these two principles, it is not clear whether this wasted property belongs to the seller or the buyer. If we accept this principle, it is opposed to the totally accepted principle "the wastage belongs to the previous seller". The articles 387 and 453 of the civil law has evaded this contradiction by the clauses "before seizure" and "after seizure" (Maqsudi, 2016).

#### **The Incompleteness of the Contradiction due to Specification of Wastage before Seizure Principle**

The answer is that "wastage when having cancellation right for the one who does not have cancellation right" is cancelled before seizure and if it includes him, since it is opposed to the principle, and it is "wastage before seizure is upon the seller", this is also opposed to the principle; but it is specified from it and has priority over it and is specific to it, so there is no contradiction. The one who says "wastage when having cancellation right for the one who does not have cancellation right", be it before or after seizure, the principle that says "all the properties that has been seized, the wastage belongs to the seller", it is specified from it and due to this, has priority over it and also is reasonably stronger than it, so "the wastage before seizure from the seller" is general (Javadi, 2013).

#### **CONCLUSION**

In a categorization, the contract is divided to the covenant and acquisition contracts. The property contract is among the acquisition contracts, i.e. as soon as the agreement is made between the parties and contract is finalized, the exchange ownership is transferred between the parties and this transference is the effect of contract and it is known as the ownership transference principle.

This principle meets some exceptions such as the property wastage before seizure principle and wastage when having cancellation right.

Although as soon as the contract is finalized the buyer becomes the owner of the property and the seller becomes the owner of the price, the first paragraph of the article 367 of civil law puts it whenever, after the contract and before the seizure, the property is wasted in the seller hands, it is wasted from the seller property and not the buyer, even though from the contract finalization time, he is the owner of property (article 387 of civil law). This principle is based on this divine Hadith that all the wasted property belongs to the seller property before the seizure. As was mentioned, this principle is applied if the property is wasted before seizure by the buyer and it is not due to negligence and fault by the seller or third property. In two latter assumptions, this principle is not applied and the buyer must refer to the person responsible for property wastage to seize the price or alike of the property. Principally, with the submission of the property by the seller to the buyer, the guarantee is dismissed and if so, the wastage belongs to the seller. Also, if the seller has submitted the property to the buyer, and the buyer refused, can refer to the court and his guarantee will be dismissed.

Although the seller guarantee is dismissed with the property submission, and is transferred to the buyer, there is an exception, e.g. in this specific case, in spite of submission of the property to the buyer, the seller guarantee still remains. According to the article 453, whenever the property, after submission and in the time of one of the council, animal or condition cancellation rights, is wasted, and it is specific to the buyer, the wastage is still upon the seller.

Since the property wastage in the time of having cancellation right is opposed to the ownership transference principle since wasting and defecting any property is upon its owner, the certain extent must be sufficed in interpreting it and it only include the triple cancellation rights. Also, for the general property wastage and the price, the principle should not apply. Since the principle is only applied when the property is seized by the buyer, and it does not include the wastage before seizure, there is no contradiction with the principle "property wastage before seizure", even if it has cancellation right. But after seizure of the property, if the buyer has one of the mentioned cancellation rights and the seller has no cancellation right, not including the triple cancellation rights, the sale is completely established from his side and the guarantee of wastage and defect is upon him.

The Iranian legislator has also put the triple cancellation rights as council, animal, and condition, to the seller, in the article 453 of the civil law.

And the submission of the property by the seller to the buyer or in case he refuse, submitting it to the ruler, dismiss his guarantee for the property. However, the existence of cancellation right under the mentioned condition lead to a situation in which, even by submission, the guarantee is not dismissed.

Therefore, the existence of cancellation right in the contract can lead to, even by submission, the seller guarantee for property wastage is not dismissed. Since this subject is opposed to the principle, the sentence of jurisprudence and article 453 should not be on top of the general rules of the deals and it should be specific to the property sale.

In summary, the contents of this principle are opposed to the principle "the wastage of any property is upon the owner" and its most significant reason is the news on this regard. Therefore, its certain extent must be sufficed and what narrations

emphasize is that it is about the property contracts and only in case of property wastage by the natural disasters in the time of having buyer-specific cancellation right of the council, animal, or condition type, can be applied and its content is that the wastage of the sold property under this condition is upon the seller in a way that a moment before the wastage, the contract is cancelled and the sold property returns to the seller property and the wastage happens in his hands and the price must be paid back to the buyer.

Finally, the following results are obtained:

- 1- This principle is specific to the property selling contract and cannot be applied for other exchange contracts.
- 2- This sentence is only executed if the property is wasted after seizure due to emergency or by force.
- 3- This sentence is specific to the council, animal, and condition cancellation right which is only fixed for the buyer.
- 4- By the seller guarantee, the exchange guarantee is meant and not the real guarantee and its contents is that the if the property is wasted after seizure and when having buyer-specific cancellation right, it belongs to the seller such as the case one moment before the wastage, the contract has been cancelled and the property has returned to the seller and wastage happened in his hands and the price must be paid back to the buyer.

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The Holy Quran

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