The Necessity and Evaluation of Stipulation in Contract Law of Iran

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INTRODUCTION

Considering the stipulation and its effect on the contracts is very important and necessary because today it is hard to find a contract which is devoid of any stipulation. Most of the deprivations, prohibitions, restrictions of the effects of contract and even addition of something to it are provided with a factor named stipulation. Therefore, paying attention to what is said about the authenticity of the stipulation and the validity of it is complicated but it is inevitable. However, so many things have been said about the authenticity and nullity of the stipulations and the jurists and scholars have mentioned this in their own juridical books but it is felt that discussion about the validity of the stipulation and the authenticity of it has been left untouched in the juridical discussion.

The question arises here is whether complying the necessary stipulations of authenticity of the contracts mentioned in the Article 190 of the Civil Code is a necessary entity in the validity of the stipulation or not, and if it is necessary, shall the whole or some parts of it be taken into consideration for the stipulation to be valid? Article 190 of the Civil Code states that for the validity of contract the following conditions are essential:

1. The intention and mutual consent of both parties to the contract
2. The competence of both parties
3. There must be a definite thing which forms the subject matter of the contract
4. The cause of the transaction must be lawful

On the other hand, since a stipulation is an engagement accompanied by the contract and is considered as a subordinate engagement, this question raises that whether this subordinate engagement should have some conditions like the main contract or just being necessarily included in the main contract makes this stipulation (of course if it is authentic according to the Article 232 and 233 of the Civil Code) valid. It is obvious that if the stipulation is not valid or is considered as null, this invalidity or nullity does not lead to the inauthenticity of the contract unless this inauthenticity affects the main contract.

There is no absolute and unit idea among the scholars and jurists about the fact that whether observing the necessary conditions of authenticity of the contracts is necessary even for the stipulation or not. Regarding the lack of such articles about this subject in the Civil Code, some of the scholars believe that observing the necessary conditions of the authenticity of the contract is not necessary about the stipulation and also regarding the Articles 232 and 233 explaining the nullifying conditions, the legislative has never mentioned the nullity of the conditions which lack the necessary condition of authenticity, so the scholars believe that there is no reason for the nullity of such conditions and there is no legal verdict for the nullity of these conditions. This means that the silence of the legislative is an absolute proof for the authenticity of such conditions. On the other hand, it
seems that the difference between Article 190 and other articles is that the necessary conditions of the authenticity of the contract in the latter articles are about those contracts which are entered into individually and do not contain any stipulation. Therefore there is no reason for the necessity of observing the conditions of the private contracts. So, the conditions which lack the necessary conditions of authenticity should be assumed true (Emami, 1989, a, p. 272).

Some of the scholars strongly believe that the necessary conditions of the authenticity of the contract should be taken into consideration even in the stipulation and they argue that the stipulation which is subordinate does not affect the nature of it. Because the conditions contained in the Article 190 of the Civil Code is applied to all the contracts and engagements and the stipulations are not separate from the engagements. Besides, the necessity of observing some of the necessary conditions of authenticity can be easily figured out through noticing the Articles 232 and 233 of the Civil Code. For example, the necessity of the usability of the condition (clause 2 of Article 232 of the Civil Code) implies the necessity of subject of the condition to be capable of being owned because in financial contract usually what is usable will be profitable unless the usability has been considered something spiritual or the legitimation of the condition (clause 3 of Article 232 of the Civil Code) has been assumed to be the legitimacy of the subject or the effects of that subject. Any condition, of which the goal is establishing some illegal affair, is considered as an illegitimate condition. So, it can be inferred that the legislatures have never wanted to inhibit the enforcement of the general rules of the contracts by legislating some condition but they aim at emphasizing those rules which change when a condition is applied. Consequently, a stipulation which lacks the necessary condition of the authenticity of the contract cannot be considered as valid (Katuzian, 2007, a1, p. 305).

Among the scholars, there are some who believe that the authenticity conditions of the contract should be applied on the stipulation. Emphasizing the necessity of consent toward the stipulation, some other think that the condition is authentic if the person who should perform it agrees with it (Tabatabaei, 2008, p. 119).

It can be seen that this theory emphasizes the necessity of consent in stipulation as was seen in contract. Stating that the stipulation should be definitely specified, some other scholars have added that the stipulation should have the authenticity condition of the contract. (Maraghi, 1996, p. 276)

Assuming that the necessary condition of authenticity of the contract affects the stipulation, the writer will discuss the necessity of the generalization of some parts of these conditions in two separate sections.

First Subsection: Sharing the Validity Conditions of Contract and the Stipulations:

Stipulation is a kind of obligation and a kind of engagement that is regarded as the object of the contract. The parties to the contract write that stipulation while drawing up the main contract in order that the stipulation is established in the real world provided that it can be established. In order to find these conditions and according to the fact that a stipulation is not valid out of the contract and is bind to the contract, we can use the general rules of the contract authenticity. It means that in cases where no law has been approved, we can use these rules. So, the conditions of stipulation can be divided into two categories. The first category is dedicated to general conditions of stipulation validity and the second category contains the specific conditions of stipulation authenticity. The specific conditions of stipulation authenticity are inferred through Articles 232 and 233 of Civil Code. The general rules are the same necessary conditions of its authenticity which can be generalized to stipulation according to what has been said in Article 190 of the Civil Code by the legislative and also the generalizability of these conditions.

First Speech: Intention of Both Parties to the Contract:

While both parties to the contract intend contract, they should be consent with the stipulation. i. e. they should separately enter into the stipulation. It means that they should intend enter into the stipulation and be consent with it. May be it is said that the intention toward the contract is sufficient and because stipulation is a part of contract and is subordinate to it, there is no need to intend the stipulation separately. It is obvious that in the beginning there is nothing wrong with this explanation. However, this cannot deny the fancy of the reluctance of the person who should perform the condition toward the condition or his reluctance toward it.

There is no doubt that the stipulation comes to existence as a validity nature through entering it into the contract by both parties even if the stipulation is established when the contract is implemented. So, it should be accepted that in order to a stipulation to be established, the intention of both parties is necessary. When one of the parties intends to enter into the stipulation while other party is reluctant to enter into the stipulation, the contract is entered into without any stipulation. Not only the stipulation won’t be established because of one of the parties’ reluctance toward the stipulation but also the contract is cancelled because of both parties’ disagreement on their intention toward the stipulation and because the stipulation does not exist out of the contract, it becomes necessary to enter into the stipulation. Also there will be no differentiation and distinction between the contract and stipulation, so there is no need to raise some discussion about the intention to enter into the stipulation or not. About the consent of both parties toward the stipulation, it can be said that if both parties are satisfied with the conditioned contract, their consent of stipulation will be achieved subordinately and
if they are not consent with the stipulation, there will be no consent of the conditioned contract which is considered null and void, it means that it is not effective. Therefore it cannot be assumed that the conditioned contract is effective but the stipulation contained in that contract is not effective. As it cannot be accepted that the stipulation is effective but the contract is not. So, if is said that a stipulation is effective or ineffective, this effectiveness or ineffectiveness is subordiate not independent (Shahidi, 2007, p. 90).

First Clause: Intention of Both Parties to the Stipulation:

Regardless of the discussion about the simplicity or complexity of will and regarding the fact that the first clause of Article 190 of Civil Code mentioning ‘the intention and mutual consent of both parties’ has been widely accepted and the will has been considered as complex by the legislatives, there should be a difference between the intention and consent of the parties and of course their effects are of different kinds, their jurisprudence will lead to different consequences and they have their own sanctions. According to this article, the necessary conditions of the contract authenticity are the intention and consent of both parties. Without these and regardless of their own specific sanctions, they are not considered valid in law. Stipulation and contract are both achieved by the agreement and consent of parties to the contract and if the parties do not agree on the stipulation, even if they agree on the contract, the stipulation does not come to existence, because the intention is not only necessary for the contract but also is a building block for the stipulation. Anyway, the effects of intention jurisprudence of each contract and stipulation are different with each other. Because if there is no intention to contract, not only there will be no contract but also it will result in the nullity of stipulation. But if there is no intention toward the stipulation, it won’t affect the contract a lot and of course the basis is on ineffectiveness of the lack of intention toward the stipulation rather than contract.

Theoretically it can be said that on what there is no agreement and has not been put in the area of intention is not valid whether it is about the main contract or about the stipulation. The necessity of intention of both parties to the contract are so important that it can be said that the parties to the contract who haven’t paid attention to some of the stipulations mentioned in the printed forms and even do not understand the meaning of them and act against them, are not obliged to observe them. The phrase ‘waiver of all options’ which has been written in the printed contracts and the common people and even some of fairly educated people don’t understand not only the meaning of ‘options’ but also are not well informed about the meaning of ‘all options’. Therefore, some of the scholars have stated that in cases where the printed or usual conditions of a contract are in contrast with the initiatives of both parties, it would be obvious that they don’t want to imitate other people and start some initiatives (Katuzian, 1987, a3, p32). Therefore if there is a proof which proves the contrast that there is no need to put these conditions in the common intention, then the signature of both parties does not necessitate them to observe those conditions. Even if we accept that all this conditions are authentic and all of them can be implemented, we cannot ignore the role of justice, especially if the conditions are not intended by the parties. Some of the scholars have considered the final verdict of common intention in the contract undeniable and they do not doubt about the influence of the conditions in the texture of the contract. In cases where the intention of the parties are ascertained, the appearance ‘signing the conditions in the printed forms’ are not valid (ibid, p. 42). Hereinafter the importance of the intention of both parties to the contract to write the stipulation increases a lot.

Second Clause: Mutual Consent of Both Parties to the Stipulation:

As it was stated above the role of will is undeniable in creating stipulation. So, besides the intention, the mutual consent of both parties in the establishment of the stipulation is necessary. For example, suppose a situation in which the parties intend the contract and have mutual consent of the contract, while the person who should perform the contract is reluctant to implement the condition. This hypothesis states that will is very important not only for the contract but also for the stipulation. While some of the scholars don’t think about a situation in which the contract is effective and the stipulation is ineffective and have compared it with a situation in which the stipulation is effective but the contract is ineffective (Shahidi, ibid, p. 91). It seems that the possibility of the effectiveness of the contract and ineffectiveness of the stipulation is not cancelled and the effectiveness of the contract in any situation does not necessarily imply the effectiveness of the stipulation.

Some of the scholars have said that one of the conditions of the authenticity of the stipulation is that the person who should perform the condition is not reluctant in implementing the condition and it happens when the lack of reluctance is about the sale. In this way, if one of the parties obliges to accept a condition in favor of the other party, the authenticity of that condition depends on his permission after that support (Tabatabaee Yazdi, ibid). It can be seen that the possibility of the fancy of reluctance toward the condition is not cancelled without the reluctance toward the main contract.

An important point is the effect of lack of consent toward the contract and the stipulation separately. It is obvious that the consent toward the main contract is not effective, while the lack of consent is an obstacle for the validity of the contract. The warranty to implement the consent toward the stipulation is even more important. The legal condition of the stipulation that both parties intended to do it but consented toward it and is contained
in the contract, should be completely examined and the reason of lack of consent should be studied. Shall we consider such a stipulation as effective of ineffective? It is obvious that this kind of stipulation is undoubtedly invalid and possibly it can be said that the warranty of unenforceable implementation which can be applied on the contract in the reluctant contracts, is even effective on the stipulation if the person who should perform the condition is reluctant. It seems that there is nothing wrong with the generalization of this implementation warranty of contract to the stipulation. Because consent, which is a part of will, is considered as one of the necessary conditions of contract and in the case of lack of consent, the contract is ineffective and is not valid in the field of law. As the legislative has mentioned in the Article 203 of the Civil Code:

‘Duress will make a contract unenforceable even when it is caused by an outside party other than the two parties concerned.’

Although the legislative has used the warranty of ‘unenforceable’ instead of ‘ineffective’ and although we know that the ‘unenforceable’ includes ‘nullity’ and ‘ineffectiveness’ and of course because the above mentioned contract merely lacks consent, the contract is not void. However, the consent jurisprudence cannot be ignored because if stipulation lacks consent, it is not valid, so one of the most necessary conditions does not exist. Because we know that for a deed to be established, the consent of both parties, while entering into the contract, is necessary and without the existence of consent we cannot assume that deed as real in the legal field and even assume it to be valid. Although stipulation depends greatly on the contract, practically it is a legal entity whose validity needs both parties’ will toward it.

In the case of ineffectiveness of the stipulation, the validity of the stipulation depends on the consent of the conditioned upon of his legal substitute. Now, if this question raises that how the lack of consent of the person who should perform the condition affects the stipulation and contract, it seems that the lack of consent of person who should perform the condition voids the stipulation and of course the nullity of the stipulation does not result in the rights of cancellation for the person in whose favor the contract has been drawn on and may be apart from the generalization of necessary condition of contract to the stipulation and the warranty of its implementation, we can use the last part of Article 240 of the Civil Code which has said:

‘If when a contract has been made it is found that the carrying out of its condition is impossible or if it becomes known that the carrying out was impossible when the contract was made, the person in whose favor the contract was drawn up will have the option of canceling the contract, unless the condition becomes impossible of fulfillment owing to some act of the person in whose favor the contract was drawn up.’

Unity has been considered as the criterion and the right of cancellation has not been given to the person in whose favor the contract has been drawn up. Besides, in the above mentioned hypothesis the person in whose favor the contract has been drawn up is prior because of the reluctance of the person who should perform the condition and of course he should accept the result of his action.

Second Speech: the Competency of Both Parties to the Contract:

There are so many things said about the general rules of the contracts, necessary conditions of the contract authenticity, the competency of both parties and its triple conditions and the necessity of the competency of both parties to the contract. It should be perfectly studied that what the meaning of parties’ competency is and the parties who wants to include the stipulation should be competent in a different way from the competency that the legislative means it or not. There is no doubt that the validity of the stipulation depends greatly on the competency of both parties. But, regarding the simultaneous time of entering into the contract and stipulation and the sameness of the parties of contract and stipulation, if the parties are competent enough to the contract, there will be no discussion about the competency of both parties to the stipulation. If they mean tabani condition or they claim about the authenticity of conditions before and after the contract, then there is no way except examining the competency of both parties to the contract at the time of contract and stipulation separately. If we don’t believe in these kinds of conditions, there will be no need to discuss about these conditions.

Although the competency of both parties is necessary for the authenticity and validity of both contract and the stipulation, the existence or inexistence of the competency for the stipulation is also subordinate. It means that if the parties to the contract are competent, they will be competent for the stipulation that is entered into subordinately and one of the parties is not competent for the contract, he won’t be competent for the stipulation, because the time of establishment of both the contract and the stipulation is the same and it cannot be imagined that one of the parties is competent for the contract and isn’t competent for the stipulation. While at the time of contract, the stipulation is dependent on the contract and we cannot assume a separate legal existence for the stipulation, this dependence is continued until the establishment of the contract. It means that if the contract is cancelled because of some reasons, the stipulation will also be cancelled. For example if a piece of land is sold provided that the buyer builds a building for the seller according to a specific plan, then the above mentioned contract is cancelled by applying the right of cancellation of one of the parties or cancelling the contract by mutual agreement, then the stipulation included in the contract is also cancelled and the buyer is no more obliged to build a building for the seller. According to discussion above, there will raise no question like if the
Third Speech: There Must Be a Definite Thing Which Forms the Subject-matter:

If the parties to the contract are going to consent about a definite thing, it is not enough to refer to the features of the thing and the concerned thing should be specified by the certifications of those features. It means that the object of transaction should not be identified doubtfully among other things (the object of transaction should not be indefinite). Mentioning this point and also stating that the concepts ‘identified’ and ‘certain’ are closely related, some of the scholars do not unite these two concepts (Katuzian, General Rules of the Contract, ibid, pp. 177-178). It seems that it is not necessary for the stipulation to be certain and there will be no problem if there is some doubt about it and it won’t affect the main contract, besides the necessity of identifiably is not applied on it. So, it is not necessary to identify the subject of stipulation. For instance, if it is stipulated for the lessee of the garden that he should plant trees instead of those trees that are dried, this condition cannot considered to be invalid although the object of stipulation that is the number of dried trees and the number of trees that should be planted is not clear. In other instance, if the seller is necessitated to give one of his parrots to the buyer, although the object of stipulation is not certain and the concerned parrot is not identified, the stipulation is not cancelled and is valid. If the same thing happens for the contract and the object of transaction is not certain and there is some doubt about it, the contract is null and void. Apart from the subject that the object of transaction is the main part of it, it has been clearly stated in the third clause of Article 190 that the object of transaction should be clear and it is one of the basic parts of the authenticity of the contract and of course the authenticity of the contract depends on the settlement of the ignorance, because the ignorance voids the contract and the scholars agree on the cancellation of the contract by ignorance (Maraghi, ibid).

The period of option of condition should be clear and registered and if the starting point has not been identified, and then the starting point is considered from the time of entering into the contract. (Allameh Heli, 1410, a1, p374). If there is no specified period for the option, or it has not been specified clearly, both the option of condition and the contract in which the above mentioned condition is included are null and void. The legislative has stated in the Article 401 of the Civil Code that:

‘If no period be specified for the Option of Condition both the condition of option and the sale are null and void.’ Like a situation in which a person sells a house to another one and it is stipulated that the seller has the rights of cancellation, without mentioning the period of this option or even it is stipulated that the seller has the rights of cancellation until he can find a proper domicile for himself. In this case because the end of period is not clear, it means it is not clear when he finds a proper domicile for himself, then the period of option is also unclear. The contract containing such stipulation is null and void and according to the jurisprudence the reason of this nullity is the ignorance of the period of the option of condition in this contract. Because a contract in which the rights of cancellation is given to one of the parties in an unknown period and the fate of such contract is not clear for an unknown period is considered as a disputable contract.

Some of the scholars believe that the nullity of the contract is the unclear period of option which leads to unknown decrease of the value of the object of transaction and the value of decrease is unclear. The second clause of Article 233 of the Civil Code is applied on this case. According to this clause ‘Conditions which are unknown and of which lack of knowledge entails ignorance of the consideration is null and void and also it nullify the contract’ (Emami, ibid, p489). This theory has been explained by Shahidi as: in order that the nullity of the contract is legally explained, Emami stated that Article 233 of the Civil Code is applied on this case and the nullity of the contract is assumed as legal through the ignorance of the consideration of the stipulation (Shahidi, 1370, p 120).

Sometimes the period of option of condition cannot be clearly specified because there is doubt between two periods. For example, if it is stipulated in the contract the period of option of condition is until the time when maternal and paternal uncle of that person in whose favor the contract has been drawn up travel back, this case can affect the contract and nullifies it even if the time of their arrivals is crystal clear, because there is doubt between two fixed time of arrivals and this leads to the nullity of both contract and stipulation. Possibly it is imagined in this case that the nullity of the stipulation is ipso facto and therefore all the uncertain stipulations are null even if doubtfulness does not damage the main contract.

It should be answered that the nullity of the stipulation in the last example is considered as a part of the contract and because the doubtfulness of the stipulation affects the contract and nullifies the contract, so the stipulation is null and void.

So the base of nullity of the stipulation is that the stipulation subordinates the contract and doubtfulness of the stipulation does not nullify it. Expressing that the fixed time is a part of one- eight, some of the scholars have said that these kinds of contract and any contract which the period of option has not been specified are null and void (Boroujerdi Abde, 1380, p189).

According to Article 401 of the Civil Code, the legislative says that both the stipulation and sale are null and void. Anyway if the stipulation is considered as an individual engagement, it should necessarily be certain,
so according to what has been said, stipulation is a subordinate and dependent engagement whose certainty is not the criterion for the authenticity and doubtfulness does not nullify its validity.

Some of the scholars consider certainty as the authenticity criterion and besides comparing it with necessity of certainty of the object of transaction, they have said that one of two objects or one of the two actions cannot doubtfully be the object of contract and the concept of one of the two objects have not established (Shahidi, 1386, pp. 93-94). It seems that if the uncertainty of the stipulation does not damage the main contract, there will be no problem. For example in the sale of a house, if the buyer stipulated that he will give his canary or parrot to the seller, then he optionally gives one of these two things to the buyer, the main contract is not damaged and of course the stipulation is not null. Besides, some of the scholars say that doubt effective in cases where specifying an example in the real world is not possible and if there are some examples in the real world, there will be no ignorance and problem (Allameh Fani, 1403, p199).

Fourth Speech: Cause of Transaction Must Be Lawful:

The stipulation must be lawful. The parties to the contract shouldn’t agree on a stipulation which is inconsistent with the rules of Quran and tradition, law or something which has been unlawful by the religion. The same rule is applied when the stipulation is inconsistent with the public regulation or good morality or the convention when it plays an important role. The above mentioned points are juxtaposed. For example what has been forbidden by the religion is also banned by the law subordinately, or what has been in contrast with the public regulations or good morality, the law is also in contrast with it. The legislative has put the unlawful stipulations among the void conditions and of course the reasons which necessitate the faithfulness to the stipulation is cancelled. It means when there is a reason which implies the unlawfulness of the stipulation; the condition won’t be among the valid conditions anymore (Allameh, 1387, p101).

The purpose of the stipulation, like the purpose of the main contracts, should be lawful. Lawfulness or unlawfulness of the purpose of the stipulation can be effective in both the stipulation and the main contract. It might be assumed that because the legislative has counted the cases of void stipulation in the Article 232 of the Civil Code and has not mentioned the lawfulness of the purpose of the stipulation, there is no need for the stipulation result to be lawful and even if we assume that the unlawfulness of the purpose of the stipulation, it cannot be counted as null and void (Shahidi, ibid, p92). It should be known that because the legislative has mentioned the nullity of unlawful stipulation in the Article 232 of the Civil Code, it is evident that the stipulation is unlawful. There is no difference that if the effect of the stipulation causes an unlawful consequence of the purpose of the stipulation is unlawful. So how we can consider an unlawful stipulation as faith binding and oblige the person who should perform the condition to observe it. Therefore, when the purpose of including a condition in the main contract is to reach the immoral intentions, illegal goals or unlawful affairs, doubtlessly the stipulation is null and void. However the necessity of the lawfulness of the purpose of the stipulation can best be understood through the general rules of stipulation and also generalization of the necessary conditions of the authenticity of the contracts to the stipulations.

On the other hand, the necessity of the observation of this condition can be regarded as one of the examples of the necessary conditions of the validity of the stipulations.

Regarding the fact that the legislative has approved no rule for observing the conditions which are necessary for the authenticity of the contracts and also the lack of any article according to which such stipulation could be regarded as null and void, some of the scholars have assumed that these stipulations, whose purposes are unlawful, are true. Besides, they refer to the Article 232 of the Civil Code in which the legislative has counted the void stipulations, as an absolute proof because in this article the stipulation with unlawful purpose has not been considered as null and void (Emami, ibid, p272).

The important point is that the unlawfulness of the stipulation undeniably put it out of the field of the validity. For example in the sale of a house, the buyer is stipulated that he should give his car to the seller in order to illegally carry gun, this stipulation cannot be regarded true even if the contract is lawful, because a stipulation is considered authentic when the person who should perform the condition observes the premises of it.

Second Subsection: Non-Commonality of All the Validity Conditions of Contract and the Stipulation:

There is no need to generalize all the validity conditions of the contract to the stipulation and the stipulation can be valid without some of these validity conditions, because the necessary conditions of the authenticity of the contract mentioned in the Article 190 of the Civil Code, related to the contracts, are the bilateral legal affairs that are entered into individually and they are established independently. According to this article, it is inferred that there is no need to generalize the conditions of the contract to the stipulation. Some of the scholars inductively consider some of these conditions as the necessary conditions of validity (Shahidi, ibid, p89). The subordinate nature of the stipulation toward the main contract and the dependence and invalidity nature of stipulation without the main contract oblige us to accept this idea. On the other hand it should be known that the
base is put on the lack of necessity of the validity of these conditions for the authenticity of the stipulation and besides it is not necessary to generalize all the conditions of the contract to the stipulation (ibid, p90).

Not observing the necessary conditions of the authenticity of the contracts, according to case, results in the nullity or unenforceability of the contract, because without these conditions the contract is assumed to be incomplete and void. The nullity is the mere result of not observing the rules (Katuzian, 1366, b2, p303) and because the legislative has not approved any article regarding the clarity or certainty of the stipulation, so in the case of non-clarity or doubfulness, there will be no rule breaking whose result be the nullity sanction. When a stipulation leads to an unlawful affair, it will doubtlessly be null and void.

It can firstly be accepted that the necessary conditions of the contract authenticity is specifically for those contracts which are entered into individually. Anyway, shall we regard the stipulation which lead to unlawful results as valid or not? It seems that if we think more profoundly, it would be better to separate the concepts ‘validity’ and ‘authenticity’ of the contract although they are so closely related that can be mixed up. Anyway it seems that for the stipulation to be true, not being the examples of the Articles 232 and 233 of the Civil Code is not enough and the stipulation should have the necessary conditions but it is obvious that the existence of all the conditions in the stipulation is not necessary. For example, in the sale of a car at the charge of 500000 Rials, if it is stipulated in the favor of the seller that the cash money which is in the pocket of the buyer be transferred to the seller, the contract and the stipulation are both authentic and after the contract, the buyer should give his cash money to the seller even if the amount of the cash money which is in the pocket of the buyer is not clarified (ibid). Although the non-clarity nature of the stipulation is acceptable, is it possible to regard the stipulation authentic despite the reluctance of the person who should perform the condition (toward the stipulation and not the main contract)? The answer is doubtlessly not. It means that the above mentioned example does not deny the generalization of some of the necessary conditions of the contract authenticity to the stipulations. However, they have assumed that the unlawful purpose as an obvious example of unlawfulness, the subject of Article 217 of the Civil Code, not only is void but also it nullifies the main contract too (Shahidi, 1382, p344). A more important point is that they have assumed a clear distinction between the above mentioned article and the third clause of Article 232 of the Civil Code which related to unlawful stipulation (ibid, pp 364-365). Therefore, there should be a clear distinction between the authenticity conditions of stipulation and its validity conditions and their difference is undeniable.

First Speech: Necessity of the Will and Competency of the Parties to the Stipulation and the Lawfulness of Its Result:
First Clause: Necessity of will and Competency of the Parties to the Stipulation:

a. Necessity of the Parties’ Will to the Stipulation:

As the parties intend to enter into the contract and establish it, they have to intend to enter into the stipulation and establish the effects of it. It means they should have the intention to enter into the stipulation and be satisfied with the results and effects of it. You can imagine a situation in which the parties intent to enter into the contract, while the person who should perform the contract is reluctant toward the stipulation or does not want to enter into the stipulation for any reason. Therefore, it is observed that the intention to the contract is not enough and the intention to the stipulation is also an important point.

b. Necessity of the Competency of the Parties to the Stipulation:

The validity of the stipulation depends greatly on the legal competency of the parties to the stipulation. It means that the parties to the contract should have the rights of fulfilling the conditions and should be competent and this right should not be taken from them. It might possibly be assumed that although for the contract to be authentic and valid the parties should be competent, the competency or incompetency of the parties to the stipulation is a subordinate affair. It means that if the parties to the contract are competent, they would be competent for the stipulation that is subordinate to the main contract (Shahidi, 1386, p91).

Principally it is true because as the time of the establishment of the contract and the stipulation is same, it is not assumable that at the same time, the parties are competent for the contract but not for the stipulation. But looking more carefully and precisely, we can find some cases in which the person who should perform the condition is competent for the contract but he is not competent for the stipulation. For example, in a marriage contract which is concluded by a person who has not reached to the full age of maturity, it is stipulated that the amount of the marriage portion is determined by him, in this case because the marriage portion is a monetary issue and the person who hasn’t reached the full age of maturity cannot determine it, then the stipulation is not enforceable but the contract is authentic and valid. Another example is that in an agency contract which a person who hasn’t reach the full age of maturity concludes with his principal, a condition is stipulated which is a certification of the Article 1214 of the Civil Code and it implies that although the agency contract is true because it isn’t a monetary contract, the stipulation is unenforceable and the effectiveness of it depends on the agreement of that person’s legal guardian. The legislative obviously states that:
‘Transaction and legal acts performed by a person not of age are not binding except with the permission of his natural guardian or his guardian, whether the permission has already been given or will be given after the transaction is made. Never the less, all kinds of possessory acts against no consideration are binding even without permission.’

Second Clause: Necessity of Lawfulness of the Result of the Stipulation:

It was said that the purpose of the stipulation like the purpose of the contract should be lawful. The purpose of the stipulation is the parties’ motivation to include the stipulation in the contract. For example, suppose that a person gives a house as a gift to his brother and stipulates in the contract that his brother pays for his mother’s expenses; the purpose of including such stipulation is that the donor wants to be certain about his mother. This motivation can be called the purpose of the stipulation. Herein a question raises that if the stipulation has any kind of purpose, is it legally valid or not and if the purpose of the stipulation is to achieve unlawful or illegal purposes, this kind of stipulation which has been forbidden by the regulation jurisprudence, is it agreeable and valid? Based on the fact that there is no necessity for the lawfulness of the purpose of the stipulation and also the fact that there is no reason to show this lawfulness, some of the scholars have not regard the stipulation with unlawful purpose as null and void (ibid, p92). However, the authenticity of the stipulation does not deny the conditions of its rightness and the validity of the stipulation does not merely depend on not being the examples of the Article 232 and 233 of the Civil Code. Besides, it should be known that the necessity of lawfulness of the purpose of the stipulation is an example which does not deny the third clause of the Article 232 of the Civil Code. Some of the scholars have doubtlessly determined a stipulation which aims to establish an unlawful purpose as illegal and unlawful (Katuzian, 1366, a3, p167). Not only the subordinate nature of the stipulation to the contract isn’t an obstacle for the necessity of validity of it, but also the validity conditions of the stipulation can be determined by using the general regulations of the contract. Furthermore, a stipulation whose purpose is unlawful or the purpose of including it in the contract is to reach illegal intentions or immoral purposes cannot be assumed valid and the person who should perform the condition cannot be oblige to observe the stipulation. However, regarding the different varieties of illegal purposes of the stipulation, the contract would have different endings.

a. About the Stipulation:

A stipulation which has unlawful purpose is null and void. Although sometimes in spite of the nullity of the stipulation because of unlawful purpose, the contract is still authentic and valid. On the other hand, the unlawful purpose is merely effective on the stipulation and does not damage the contract. For example in a contract, if it is stipulated for the buyer that he should keep his properties out of the reach of the creditors. In this case, the stipulation is not valid but the main contract still works. This stipulation is invalid because of the unlawful purpose, but the main contract is authentic and valid because the unlawful purpose of the stipulation is not transferred to main contract. On the other hand, in the above mentioned example, the stipulation is null and void and the contract is authentic. Another example which can be given to clarify the point is that for instance in the sale of a factory it is stipulated that the seller’s truck be transferred to the buyer to be used to carry drug. Mentioning that the purpose of the person in whose favor the contract has been drawn up is unlawful, some of the scholars have said that the stipulation is not null and void but the person in whose favor the contract has been drawn up cannot use the truck to carry drugs (Shahidi, 1386, p93). It is not clear that if the stipulation is not void, why the person in whose favor the contract has been drawn up cannot use the truck to establish the stipulation.

b. About the Contract:

We have assumed that the unlawfulness of the stipulation does not affect the main contract. But sometimes the unlawfulness of the purpose of the stipulation affects the main contract. It means that the purpose of the stipulation nullifies the contract and it happens when the unlawful purpose of the stipulation is generalized to the main contract and nullifies it. It means that if the purpose of the stipulation damages the main parts of the contract, the main contract will be null and void (the second clause of the Article 233 of the Civil Code). It should be accepted that when the unlawful purpose of the contract affects the main contract, the contract is null. For example the testator stipulates in his will that the heritage be spent in an unlawful way, in this case not only the stipulation is null but also the stipulation is null and void too (Mohaqeq damad, 1368, p102).

Second Speech: Invalidity of the Clarity of the Stipulation:

The legislative in some cases assumes that the ignorance toward the subject of the contract or the amount of the contract does not nullify the contract and in some articles like the last part of the Article 216 states that having a general knowledge of the object of transaction is sufficient. As it has said:

‘The object of a transaction should not be ambiguous except in special cases where a general knowledge of the matter would be sufficient’.
Or according to Article 563 of the Civil Code the specification of the reward is not necessary in the contract of reward (ji’ala). As it is stated:

‘In a contract of ji’ala the specification of the reward in all particulars is not necessary; therefore, if a person engages himself to give to whoever finds an article of his which he has lost a specified undivided share in it, the contract of ji’ala is in proper form.’

Another example has been given in the contract of settlement which is explained in Article 766 of the Civil Code:

‘If the two parties bring to an end, in a general settlement the whole of their mutual claims whether existing or potential, in the form of a settlement, all the claims are accounted as being included in that settlement, even if the cause of claim was unknown when the settlement was made, unless the settlement did not include that claim, in accordance with evidence.’

Although in the above mentioned examples, lack of specific knowledge does not affect the authenticity of the contract and the legislative has exceptionally ignored the rule of having specific knowledge about the contract, according to the second clause of the Article 233 of the Civil Code, the stipulation which is a subordinate engagement is considered as null and void when the nullity of the contract and the stipulation affect each other. If the ignorance to the stipulation affects the contract or creates uncertainty in it, obviously the rule of executing the stipulation does not apply on it. Otherwise, if the stipulation is imperfectly known and the ignorance of it does not affect the main contract and does not lead to ignorance, there will be no problem in including the stipulation in the contract and the stipulation won’t be null and void. According to what was said, some scholars has allowed the fulfillment of the imperfectly known affairs and only when the uncertainty of the stipulation leads to peril, it will nullify the contract of sale (Khoeie, 1410, p43).

Some of the scholars have said that if the establishment of the imperfectly known stipulation is impossible, it is null and if it compel the establishment of the object of transaction, it will nullify the contract (Sheikh Musa Khansari, 1385, p145). So it means that if the condition isn’t impossible and does not compel the establishment of the contract and does not result in ignorance , it is authentic even if it is imperfectly known. So uncertainty is not a condition for the validity of the stipulation.

It has been said that the profit contract for the farmer is permitted even if it is imperfectly known (Mirzayee Ghomi, 1371, p466). But if in the deed of hire of in any other contract it is stipulated that the thing that results in the ignorance of one of the parties, the condition is null and void. The fact is that the main contract is also null and void especially when the main qualification is that condition (ibid, p466). The period should also be determined in the option of condition provided that the period is chosen in a way that it doesn’t decrease of increase and it is determined and clear (Tabatabaei, …, p328).it should be mentioned that the necessity of determining the period of condition is when the condition affects the main contract and about the option of condition it should doubtlessly be specified and as we know any imperfectly known contract is null and void. The reason of its nullity is the danger of the contract and also the agreement made by scholars (Mirzayee Ghomi, ibid, p169). Otherwise, if the stipulation does not affect the parties and there is no necessity for clarifying the period, there is no problem in not knowing it.

Therefore, if the ignorance to the stipulation exceptionally affects the main contract, it will cause damage to the contract. Otherwise, if it doesn’t affect the main contract, the stipulation will be valid.

Conclusion:

According to what has been said in this paper and also paying careful attention in the general rules of the contracts and also the regulations of the stipulation, it seems that besides having the authenticity conditions, it should have the validity conditions. On the other hand, before discussing about the necessary conditions of authenticity, the necessary conditions of the stipulation should be studied first. Paying attention to the legal situation of the stipulation, it will be obvious that not all the necessary conditions of authenticity of the contract but some of the conditions can affect the stipulation and binds its validity. It means that the parties to the contract should intend to the contract and be competent to the contract and also the purpose of the contract should be lawful but there is no reason for the specifying the subject of stipulation.

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