



مجتبی محمدی، ۱۴۰۳

بررسی حقوقی تقلب در متن قرارداد بین کارفرما و کارکنان توسط کارفرما و جبران خسارت آن

موضوع تقلب در متن قراردادها مسأله‌ای است مردود از دیدگاه حقوق و حقوق جزا؛ چرا که تقلب چه در اخلاق، حقوق و آموزه‌های دینی مذموم و ناپسند بوده است. امنیت قراردادی از آنجایی که ضامن اطمینان طرفین قرارداد می‌باشد بسیار حائز اهمیت است چرا که در اثر ناامنی در قرارداد های موضوع های مختلف ضربه های جبران ناپذیری به اقتصاد کشور وارد می شود و از طرفی حس اطمینان افراد حقیقی یا حقوقی نسبت به قراردادها از بین خواهد رفت و میزان سرمایه گذاری ها نیز طبیعتاً کاهش خواهد یافت. در حقوق راهکارهایی برای تقویت امنیت قراردادی پیش بینی شده است. البته چالش هایی هم در این راه وجود دارد. در حقوق ایران، ماده ای قانونی که حکم تقلب را به صراحت بیان کرده باشد، وجود ندارد، پس قاضی در مواجهه با پدیده تقلب، ناگزیر باید به استناد اصل ??? قانون اساسی، به منابع معتبر یا فتاوی معتبر فقهی (شریعت و فقه اسلامی) مراجعه و حکم مسئله را دریافت کند. اما در فقه نیز، به صراحت از تقلب در عقود سخن گفته نشده است، جز آنکه در قالب عناوین دیگری طرح شده باشد. مقصود مرتکب تقلب، اضرار به دیگران است؛ بنابراین ضمانت اجرا نیز در حدی که حقوق شخص متضرر را حفظ نماید، کافی است و تقلب در معامله و قرارداد با رعایت شرایطی باعث عدم نفوذ و بطلان معامله می شود.

کلید واژه ها: تقلب ، قرارداد ها ، متن قرارداد ها ، کارفرما ، جبران خسارت

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Thesis:

Legal investigation of fraud in the text of the contract between the employer and the employees by the employer and compensation for it

The issue of fraud in the text of contracts is a rejected issue from the point of view of law



and criminal law; Because cheating has been reprehensible and distasteful in morals, laws and religious teachings. Contract security is very important since it is the guarantor of the confidence of the parties to the contract, because as a result of insecurity in contracts on various issues, irreparable blows are inflicted on the country's economy, and on the other hand, the sense of confidence of natural or legal persons regarding contracts is lost. will go and the amount of investments will naturally decrease. Laws provide solutions to strengthen contractual security. Of course, there are challenges in this way. In Iranian law, there is no legal article that clearly states the verdict of fraud, so when a judge is faced with the phenomenon of fraud, he must refer to reliable sources or reliable fatwas (Islamic law and jurisprudence) based on Article 167 of the Constitution. Refer and receive the decision of the issue. However, in jurisprudence, fraud in contracts has not been explicitly mentioned, except that it has been proposed in the form of other titles. The intention of committing fraud is to harm others; Therefore, the performance guarantee is sufficient to the extent that it preserves the rights of the affected person, and fraud in the transaction and contract by observing the conditions will cause non-intrusion and nullification of the transaction.

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Keywords: fraud, contracts, text of contracts, employer, compensation