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Research Paper

Failure to Comply with the Principal's Interest in the Agency Contract: Reconsidering the Interpretation of Article 667 of the Civil Code of the IRI*

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Abstract

One of the most challenging aspects of the Agency Contract is determining the criteria for assessing whether the principal's interests are not respected from a scientific standpoint and in accordance with the prevailing custom of any given business. Furthermore, it is essential to ascertain the sanctions thereof.

Failure to respect the interest of principal has long been the concern of jurists and then lawyers. While there is no doubt in the necessity to comply with the principal's interest, there are a lot of difference of opinion in determining the effects of not observing the principal's interest, and also the jurists consider it as a qualitative concept and rely on the custom in determining a standard for explaining the scope of principal's interest. Performance of transactions without respecting the interest of the principal has always been a legal concern. Custom also deals with ambiguity in this regard, and as a result, the court refers the matter to the expert in the hearing, and the expert, due to the existence of a common scientific basis, ultimately gives an opinion intuitively and with perception, and the court has no way to control it Also, the courts have had a different approach regarding the

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sanction of non-observance of the principal's interest, and this adds to its ambiguity. However, the *en bank* members of the Supreme Court of Iran in its Unified Judicial Precedent No. 847 dated 2/25/1403, ruled on the non-effectiveness of contract till the approval of principal, but it still does not provide a criterion for determining non-compliance with principal's interest, and the application of the notion of non- effectiveness of contract does not meet today's social needs.

The lack of effectiveness of the transaction, which we find as the basis of a non-authorized contract in the traditional commodity markets, could be considered as an effective institution from the point of view of economic and social analysis. However, the lack of effectiveness of the transaction in the new goods and services markets as well as in the financial markets lacks efficiency and causes an increase in transaction costs.

In fact, we are faced with the default of information symmetry in a small society with fast information circulation, and it has been compiled accordingly. This means that in primitive societies, people were quickly informed of all events, and as a result, the owner of a property could not have been unaware of the unauthorized transaction. Therefore, based on the assumption of symmetry of information, the legislator believed that if the owner of goods recognizes the transaction as a loss, he can disrupt it. In a traditional rural society with a limited population and with the presence of virtue-oriented and often religious people, the non-authorized transaction has always been based on the interest of the owner.

So, Non-authorized transaction has an effective and efficient function in this social system and in that context, social relations (failure of market relations) such as moral hazard and free riding caused by asymmetry of information does not fail. The reason is that, first of all, in this society, information is exchanged quickly and the type of long-term relationship between the people of this limited society is such that it leads to participation and in this participatory process, the desire for free riding (working for one's own benefit and benefiting at the expense of another) and moral hazard (preferring one's own benefit over another's) decreases.

Therefore, a non-authorized transaction in a rural society (with limited actors, and its own surrounding environment and social context) is considered as an efficient indicator, and the sanction of non-approval will not hinder this efficiency, even though in most cases we are faced with the subsequent acceptance of the owner and rejection of the transaction seems unlikely).

In this article, we have used the library method and using the sources of legal science to answer the criterion and the sanction of non-compliance with the principal's interest, and we have tried to answer the above questions by using the economic analysis method .

In order to determine the scientific criteria regarding non-observance of the principal's interest, the basics of economics and the theory of standard deviation are used as the basis for determining the extent of the principal's loss. The tolerable loss limit can be considered as the basis for determining

compliance with the principal's interest. Based on the theory of standard deviation, the tolerable loss limit in traditional and modern goods and services markets and in financial markets is scientifically explained. Using the theory of standard deviation regarding non-observance of interest has been suggested by the author for the first time.

Then, based on the current legal interpretations in Iranian law, the author suggests his willingness to annul the contract at the level of very large losses and correctness by accepting the responsibility of the agent at the level of large losses. In the case of small losses, the contract is considered correct.

In this scientific approach, the parties of any legal relationship, as well as in the stage of litigation, the court can easily make a decision based on scientific criteria. As a result, the validity or invalidity of a transaction becomes predictable, and thus we approach one of the indicators of justice, which is predictability.

At the end, the author proposes to amend Articles 663 and 667 of the Civil Code as follows:

Amended Article 663: The agent cannot perform an action that is outside the scope of the subject matter of agency or outside the limit of the powers delegated to him. The sanction of violation is the annulment (of the transaction).

Amended Article 667 of the Civil Code: The agent must, in his handlings and performances act in the interests of his principal. The criterion of compliance with principal’s interest is the amount of the tolerable loss limit, the sanction depends as the case may be, the annulment of the transaction or the validity of the transaction with the responsibility of the defaulting agent. The tolerable loss limit is determined based on the financial criteria determined by the Government Board and with the proposal of the Minister of Justice.

Keywords: Representative Agreement, Failure to Comply with the Principal's Interest, Markets, Agent’s Limits, Agent’s Authority.

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Legal Challenges in the Application of Wife's Agency Clause in Divorce

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Abstract

The main legal basis for granting legal agency in divorce is Article 1119 of the Civil Code. According to the mentioned Article, "the parties to the marriage contract can make any clause that is not contrary to the requirements of the said contract, in addition to the marriage contract or other necessary contracts, such as stipulating that whenever the husband takes another wife or disappears within a certain period or abandons almsgiving or attempts to harm the wife's corporal integrity or misbehaves in such a way that the life intolerable, the wife should be entrusted with a lawyer and a lawyer who divorces herself after proving the fulfillment of the condition in the court and issuing the final verdict.

This type of power of agency is realized if all the contract conditions are fulfilled and the court confirms it. Nowadays, many divorce lawsuits are done by the agency, either by using the marriage contract clauses or by a regulatory agency in notary public offices, usually known as an independent agency. Therefore, the presence of any ambiguity or disagreement in the nature and implementation of the law by lawyers and jurists will directly impact the parties' rights and how the law is implemented, even making the agency abort. On the one hand, the challenges are related to the nature of the agency and its effects, and on the other hand, filing a lawsuit and leading to a verdict by using an agency in divorce. One of the conceptual challenges is the wife's right to divorce. Does granting the wife the right to divorce mean granting agency to the wife in divorce?

The other challenge is the husband's motivation to grant the wife agency. Sometimes, in his defense, the husband states that his motivation for

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granting agency was “encouraging the wife” to “continue life together” and not that the wife proceeds with divorce. In this way, this claim may take on a legal aspect that the courts consider as part of the will of the couple in granting agency. In such a case, i.e., the non-continuity of the shared life, is the legal agency also ruled out?

The third challenge is the non-granting of the power of attorney in divorce. Does a divorce lawyer have all the powers related to divorce, such as accepting a dowry? Another challenge is if the lawyer does not respect the couple’s interests in divorce, what measures can the couple take? Apart from formal challenges and the challenge of the lack of urgency in applying the wife’s conditional power of attorney after the fulfillment of the conditions, others, such as the challenge of the validity of the wife’s power of attorney in the case of the husband’s appeal after the divorce, the challenge of the husband’s intervention in the legal process, the request for divorce with proof of hardship and embarrassment and the condition of power of attorney, the challenge of the court in adopting the type of final decision can be mentioned.

In this research, the challenges have been examined, and methods and arguments have been made to adjust and combine the substantive and formal rules of agency and proceedings, providing the basis of rationality and purposefulness in these claims. The court’s action in preventing the husband’s involvement in the divorce makes such an agency similar to granting the right of agency to the wife in divorce, which is against the traditional rules of representation and the foundations of our legal system. It seems that the judicial procedure regarding the agency in divorce establishes a different type of agency. The legislator must understand the era’s requirements, make the necessary legislation to maintain harmony, and clarify the person’s duty in referring to the courts in applying for agency in divorce.

Keywords:
Divorce, Agency, Marriage Contract, Family Proceedings, Husband, Wife.

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Research Paper

The "Solemn" and "Real" Description of Currency Transactions, in Iranian Law

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Abstract

In the Iranian legal system, transactions involving foreign currencies have consistently been subject to governmental supervision and legislative scrutiny. This is due to the intrinsic relationship between foreign currencies and the value of the national currency, as well as their impact on matters of export and import. A further factor is the desire of the general public to invest in foreign currencies in Iran. This is motivated by a desire to maintain the value of their money, which is achieved by purchasing and holding foreign currencies, or by engaging in currency speculation and brokering. So many regulations have been passed regarding currency transactions including: circulars and monetary-banking regulations; Acts regarding the terms and conditions of foreign currency transaction; method of currency's price discovering; competent institutions; maximum volume of permitted exchangeable currencies, etc. The last legislative step regarding currency transactions in Iran, is the amendment Act of the "Combating Goods and Currency Smuggling Act" enacted on 1 January 2022. In these regulations, some requirements and formalities are prescribed for concluding and validating foreign currencies transactions. In the meantime, two legal descriptions of currency transactions are subject of this article: "Solemn", and "Real" description. So, we should examine that if these legal formalities make the currency transactions as a solemn contract? And moreover, is the

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"Delivery", a condition for validity of the currency transactions, and therefore it should be considered as a real contract?

The method of this research is library and documentary, and the research approach is descriptive and analytical. Materials, includes Acts and regulations, as well as legal theories. The technical analysis will also refer to the legal principles and rules, including the general principles of contracts, as well as analogy and induction, and logical interpretation.

The research plan will commence with an explanation of the concept of foreign currency and currency transactions. This will be followed by a separate analysis of each objective and formal statutory condition for concluding such a transaction, based on legal regulations and theories, as well as principles and rules. Thereafter, the legal description will be discussed, and finally, the research proposal will be presented.

The research questions are: what formalities are prescribed in Iranian law, and especially in the latest legal amendments, for conducting currency transactions? Are the formalities as such a way that currency transactions become a solemn contract? Is the delivery a condition for the validity of such transactions and therefore currency transactions should be considered as a real contract? Assuming these two descriptions, what are the effects of them? And finally, whether these two works reasonable, acceptable and enforceable in Iran's current legal system or not?

It seems that in the current Iran's legal system, and considering the set of foreign currency regulations and especially the recent amendments in the "Combating Goods and Currency Smuggling Act ", currency transactions should be considered as both solemn and real contract. As in the aforementioned Act, at the first, foreign currency transactions must be done with the intervention of imposed intermediary institutions; *i.e.* Banks and Exchanges and Financial & Credit Institutions (Paragraph (C) of the Supplementary Article 2 bis), that is considered a form of imposition on the contract parties, which is against the consensual principle. Also, it is necessary to register currency transactions in some governmental "Currency Registration Systems" (Paragraph (F) of Supplementary Article 2 bis), which is also an unusual formality for concluding a contract. Secondly, from the point of view of real contracts, not only currency transactions are a type of "Bay al-Sarf" (the classic contract for exchanging the gold and silver against each other, or exchanging the money for money) which is an obvious example of real contracts in Iran (Article 346 of the Civil Code); the Act of Combating Goods and Currency Smuggling, considers the delivery of currency, as an essential factor in all currency transactions (Paragraph (D) of the Supplementary Article 2 bis). Based on this definition, not only the statutory formalities in currency transactions are as legal condition for their concluding, and therefore in case of non-compliance with these formalities, the transaction should be considered "Null"; the delivery is also a condition for validity of the contract. Moreover, the mechanism of currency's ownership proof has changed. So, despite the fact that currency is movable property, in many cases, possession does not prove the holder's ownership; Rather, proving the ownership will require the registration's receipt in the governmental currency systems (Paragraph (G) of the Supplementary Article

2 bis). Also, the ownership of currencies which have been obtained before or after the recent amendments Act, is subjected to two different types of proving mechanisms (Paragraph (H) of the Supplementary Article 2 bis): based on possession (old system), and based on governmental currency system's receipts (new system), which theoretically and practically, contains many difficulties. Finally, despite what said as a rule about the nullity of currency transactions without complying the statutory formalities, it seems that the "*inopposabilité*" (non-invocability, *i.e.* the contract is valid between its parties on one hand, and is invalid to the government and other third parties on the other hand), is fairer, more efficient, and more compatible with the practical position of foreign currencies in Iran, and therefore it is suggested to the legal doctrine, judicial precedent, and legislator.

Keywords: Consensual Contract, Currency, Currency Smuggling, Currency Transactions, Combating Goods and Currency Smuggling Act, Delivery, Nullity, Real Contract, Solemn Contract.

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Research Paper

Comparative Study of the Sample Goods Loss in Iranian Law and the Convention on Contracts for the International Sale of Goods

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Abstract

In the context of international trade, merchants are primarily concerned with concluding a secure sale in the shortest possible time frame. This approach allows them to mitigate risks, reduce costs, and conserve time. Sale by sample is one of the recognized methods to achieve this objective. Particularly in international trade, merchants, before entering into a transaction, request a sample of the goods from sellers to ensure quality and, after testing and approving it, place their order. The need for speed, the long distances involved, the unavailability of all the goods at the time of sale and the difficulty of inspecting the goods in order to eliminate any ambiguities all point to the need for this type of sale in the field of international trade. Sale by sample is a type of sales contract in which the buyer becomes aware of all or part of the characteristics of the subject matter of the transaction based on the sample provided by the seller, and the delivered goods must conform to the mentioned sample. This method is used to describe the goods in order to eliminate ambiguity and specify the object of the sale. When the goods are not available, and the seller wishes to give a full explanation of them, they can present a sample to the buyer. A sample differs from a model. A model may represent all or only some of the characteristics of the goods being ordered for manufacture, while the sample pertains to existing goods.

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Jurists have differed in their opinions regarding the validity of sale by sample, particularly on whether the sample constitutes part of the sold goods and whether presenting the sample can replace a description of the goods. They agree that if the sample is part of the existing goods, the contract is valid; otherwise, they consider the contract void due to the lack of determination and description of the goods, as they do not see the presentation of a sample as a substitute for the description of the goods. However, contrary to this earlier view, most jurists consider viewing the sample as providing more clarity about the goods than a mere description. The Civil Code follows the majority opinion and recognizes the validity of the sale by sample. After the transaction is completed, the buyer expects the goods delivered to conform to the sample, and if the delivered goods differ from the sample, it is considered a breach of the seller's obligation, and in the absence of an agreement, the buyer can reject the goods. The International Sale of Goods Convention also recognizes this type of sale, with the seller's primary obligation being to deliver goods that conform to the agreed-upon sample. This research aims, through a comparative study of Iranian law and the International Sale of Goods Convention, with an emphasis on judicial practice, to explore how disputes between parties are resolved in cases where the characteristics of the goods are or are not specified in the contract, and to determine on whom the burden of proof for the non-conformity of the delivered goods with the sample falls in Iranian law and the mentioned convention. Previous research indicates that studies conducted in this area have only addressed the consequences of non-conformity of goods with the sample and have offered a general statement regarding the destruction of the sample by the buyer before the delivery of the goods, without delving into different scenarios or details. A review of the regulations on sale by sample in Iranian law and the International Sale of Goods Convention reveals no explicit guidance on the impact of sample destruction on the obligations of the parties involved. The findings of this research, using a descriptive-analytical method, indicate that if the sample is lost before the seller's obligation is fulfilled, there is a slight difference between Iranian law and the said Convention. In Iranian Civil Code, provided that the characteristics of the goods are mentioned in the contract, the delivery of the sample to the buyer is supplementary, and the seller is discharged of the obligation by delivering goods that match the contractual quality. If the characteristics of the goods are not mentioned in the contract, the seller has the discretion to choose the goods, and the burden of proving non-conformity with the lost sample rests with the buyer, as they are making an additional claim after delivery. However, according to the provisions of the Convention, if the characteristics of the goods are mentioned in the contract and a notice of non-conformity is sent by the buyer to the seller, the burden of proving that the delivered goods conform to the offered sample lies with the seller. In the absence of a specific mention of the characteristics of the goods in question in the contract, the burden of proof regarding any alleged non-conformity rests with the buyer.

Keywords: Conformity of the Goods, Delivery of the Goods, Sample Loss, Sale by Sample, Sample Goods.

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Research Paper

The Validity of *Res Judicata* and Its Evolution in the Rules of Consolidation of the Claims and Grounds in the French Legal System

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Abstract

Among the rules of civil procedure law, there is the validity of *res judicata* which it has been a basic rule of law from a long time ago and citing this rule as a procedural objection during the claim causes a permanent barrier to the proceedings. In general, the implementation of this rule requires the existence of the triple conditions including the unity of the subject, the litigants and the cause of action.

Recently, the judicial precedent of France, the country of origin of the rule, has given the two other rules in order to eliminates the inefficiencies and to correct implementation of the validity of *res judicata*; The rule of consolidation of the grounds which means that the plaintiff of the initial claim is required to present all the causes and directions on which the claim can be based, otherwise, the claim is subject to the validity of *res judicata*. This rule has been noticed in a known French judicial case named "CESAREO".

The second rule, which concerns the consolidation of claims, stipulates that the plaintiff of the initial claim is obliged to utilize all available defenses and, if necessary, raise a counterclaim. Otherwise, following the introduction

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of a separate claim against the plaintiff, the issue will be deemed resolved. This rule was established by the commercial branch of the Supreme Court of France in a judgment concerning an arbitration case. Notwithstanding the existence of opposing views on these two rules, the legal system of France, in its traditional implementation of the rule of res judicata, is founded upon the purpose of establishing this rule. This includes the one-time judicial proceeding of the judicial matter, which requires the existence of the three conditions. Consequently, a decision must be made about it forever. In order to achieve this objective, the authors have selected and analyzed a judgement pertaining to a trademark dispute, which was issued by a French appellate court and subsequently confirmed by the Supreme Court of France. In accordance with the aforementioned rule, the French court resolved to consolidate the subject, litigants, and cause of the claim, despite the discrepancy in the subject matter of the initial and subsequent litigation, the dissimilarity in the litigants involved in the two claims, and the fact that the referenced legal articles are not identical. Ultimately, the court ruled that this rule encompasses the second claim as well. Consequently, all orders issued by the courts are subject to this rule, including judgments.

This article seeks to examine the question of how the aforementioned rule could be implemented in the French legal system, and to what extent it could be applied in the context of the Iranian legal system. A review of this case demonstrates that the application of the aforementioned rules is equitable and just. However, the formal unification of the three conditions does not align with the principle of the rule of res judicata, as evidenced by the judgment in the Bordeaux case. Similarly, the aforementioned judicial orders are subsumed within the aforementioned rule, akin to judgments. This is in accordance with the decisions of the French courts, which are at odds with certain tenets of Iranian doctrine. Moreover, the implementation of this rule is permitted in the appellate court, provided that the counterclaim is raised in accordance with French judicial precedent, which differs from the Iranian approach. This article provides an overview of the aforementioned rules and examines how French judges interpret the triple conditions and their implementation, with reference to French judicial precedent and a case from among the issued court verdicts. A comparison of the Iranian and French judicial precedents is a valuable exercise, as it reveals the shortcomings of the Iranian legal system. The implementation of this rule is rigid and inflexible, leading to numerous proceedings on the same matter. While some judges attempt to address this issue through their individual ingenuity, a more comprehensive solution is necessary to align the Iranian legal system with the French judicial precedent outlined in this article.

Keywords: *Res judicata*, Consolidation of Grounds and Claims, French Judicial Precedent.

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Research Paper

The Analysis of the Validity of the Condition to Forfeit the Option of Inspection and Incorrect Description in Contract in Light of the Judicial Procedure

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Abstract

The validity of the condition to forfeit of the option of inspection and incorrect description in contract is a point of dispute in legal thoughts and jurisprudential writings. According to the opinion of some legal writers and in some judicial opinions, the generality and application of Article 448 of the Civil Code, regarding the possibility of the condition of the forfeiture of all or some options in the contract, excludes the condition of the cancellation of the option of inspection. Also, in the opinion of some jurists, the condition of forfeiture of this option is invalid based on the rational rule of "prohibition of abrogation of a right that has not been created" and in the opinion of others, the condition of forfeiture of clause of violation of description option causes the transaction to be invalid. On the other hand, in some legal writings, the possibility of rescission of the choice of inspection is accepted by the condition of the contract, and also, some jurists have answered the objections of the opponents.

The present research, which using a qualitative method and using library resources, tries to solve the problems related to the validity of the condition of the fall of the inspection option and the incorrect description, while analyzing the discussion and evaluating different points of view. The main hypothesis of this research is the invalidity of the belief in the nullity of the condition of the fall of the choice of inspection and the incorrect description: because the occurrence of confusion and ignorance in the transaction causes the invalidity of the contract. While the right to terminate

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the transaction arises with the proof of the choice of inspection and the violation of description. Therefore, the realization of the option of vision does not have an effect on the removal of uncertainty, so that when it falls, the transaction becomes unknown. In other words, knowledge about the transaction is not created by establish the option, so that the removal of the option causes the transaction to become unknown. Also, some attributes that are mentioned in the transaction do not have an effect on creating knowledge and removing ignorance about the transaction, rather, they are among the attributes of perfection that come only for the purpose of attracting interest in the transaction. Therefore, the basis of the choice of inspection and violation of description in contracts is not related to the issues of ignorance and uncertainty in the transaction, but rather, it is related to the issue of mistakes; A mistake in the sub-characteristics stipulated in the transaction or in the assumption that the customer did not see the merchandise and bought it based on the description, is effective in the contract, and if he wrongs, can cancel the transaction. Because, the purpose of establishing the option of inspecting and breach of description is to remove the loss caused by the non-compliance of the transaction with the desired characteristics of the contracting party, so that he is not bound to the contract against his will and satisfaction. Thus, in the assumption that there is a mistake in the description, there is sufficient knowledge about the transaction, but the description of the subject of the transaction does not match the intention of the parties and so, the injured party has the right to rescind the transaction.

As a result, the means of the condition of the fall of inspection option and the violation of description is the waiver of the protection of the law to the possibility of termination of the contract by the party, and according to the fall condition, he is bound to not use the right of termination. Therefore, the condition of the fall of options leads to the consolidation of the transaction and agrees with the principle of the necessity of contracts (*pacta sunt servanda*).

Accordingly, article 448 of the Civil Code, under the heading "On the Rules Concerning Options in General", stipulates: " It is possible for forfeit all the options as a condition inserted in the deed of sale". So, the condition for forfeit the inspection option and incorrect description in the contract is a valid condition. In addition, it should be said: the condition of the forfeit of inspection option in the contract is outside the scope of the rule of "prohibition of abrogation of the right before its creation". Because, according to that condition, in fact, the contract party oblige that not to use the option, without he has revoked his right of termination before it is created. However, if the cancellation of all options is stipulated in the transaction, the totality of that condition does not include the option of violation of the condition, including the description condition. Also, in the assumption that the contract explicitly stipulates that: "If the seller does not comply with the specifications mentioned in the contract, the buyer has the right to cancel", the condition of canceling all options is out of the option of

violation of specifications. Indeed, in these cases, there is a conflict between the general and specific terms of the contract. Undoubtedly, the specific condition is excluded from the scope of the general terms of the contract. In other words, the option of violating the description condition as well as the explicit condition of the option of inspection, remain out of the scope of the general condition of fall of option. Nevertheless, it is proposed that Article 448 of the Civil Code be amended by the addition of a Note stating that: "The condition for forfeiture of all options including the option of condition violation, does not include, the condition of description".

Keywords: Default, Sale, Ignorance, Condition, Uncertainty, Termination.

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