



## CONTRACTS CONSTITUTING BARTER SYSTEM

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Received: Mar. 13, 2017

Accepted: Apr. 13, 2017

Published: June 1, 2017

### **Abstract:**

*By the invention of money trading contract lost its popularity and left its place to sales contracts. Sales contracts have maintained their place for centuries. However, while performing them some difficulties arisen since the interest has become effective in actual payment of sales contracts. The cost of the money has increased with the effect of interest and has caused great economic problems. The barter system has been invented in the economies of the developed countries as a result of big troubles and become a promising financing instrument. Barter membership contract and barter contract, which is my thesis study, is an issue that is not regulated in Turkish law and has not been studied much. This article is written to introduce the barter system and the contracts constituting this system.*

### **Keywords:**

Barter System, Barter Membership Contract, Barter Contract

## **1. Introduction**

Money is the most common means of exchanging goods and services. This functional means was invented by Lydian's which dominated the west part of Anatolia around 7th century B.C. for contributing the commercial activities. With the development of trade, the borders had also expanded and exchange system used in trade had become insufficient for the people. Due to the problems arising from both parties believing its own goods is more valuable, unbalance between the exchangeable goods, indivisible character of the goods and inability to find anyone supplying goods, money had been invented. With the invention of money exchange contracts lost its popularity and left its place to sales contracts. Sales contracts have maintained their place for centuries. However, while performing them some difficulties arisen since the interest has become effective in actual payment of sales contracts. The cost of money due to the effect of interest has increased and caused big economic problems. So the barter system has been invented because of the economic problems in the developed countries and become a promising financing instrument. While saying that barter system has overthrown the money as a financing instrument, a closer look at the issue uncovers that money needs to be in a barter system albeit functional. Money is not used in a barter system as the provision of goods and services of the members provided in kind. However in order to keep the current account of the members easy and correct and to prevent injustices, the value of goods and services or debts of the members registered in terms of cash. This is a solution for the defective component of exchange.

Barter system based on money which is indispensable for commercial life has a very important role compared to the value of money in exchange system. For this reason, this study will briefly mention about the barter system and describe the legal qualities of the contracts constituting the system

## **2. Barter System**

When we look at the word meaning of barter, in all usage the word means a contract between two parties that allows the exchange of a good with another without using money.<sup>1</sup> Classical barter system is the name of the system which a various number of members come together to satisfy their needs of goods and services without using money.

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<sup>1</sup> Celal Gürsoy, *Barter El Kitabı*, İstanbul, (1998), 2nd edition, 1, Göksu Printing.

Apart from the barter contracts, it is also possible to pay a certain amount of money together with the goods or services in the reciprocal trade agreements, corresponding to the value of the goods or services to be bartered, as well as the basis of mutual exchange of goods or services in the barter system.<sup>2</sup>

The barter system constitutes an organization company and members called barter organization company. Regarding the functioning of the barter system, the first thing that needs to be mentioned is to become a member of the system it is possible with a barter membership contract.

The barter system is introduced by the barter membership contract which is prepared by the barter organization company and which is usually printed and will be mentioned in detail below. Before entering the system, a barter member delivers the documents requested by him or her to the organizer company. These documents may differ between barter companies. The organizer company usually demands some documents like specimen of signature, tax board, certificate of activity, written document showing the activity area of the company, supply notification form and demand notification form from the member company.

The supply notification form contains information about the goods or services produced or sold by the member company. In the demand form; information about the goods or service requests that the barter member company has requested from the system but which the system does not see in the information operating system.<sup>3</sup> By means of this form, the organization company provides new members to the system and enlarges the system according to the goods or services that the member needs in order to facilitate the debtors' contribution to the system. In some of the barter contracts, the barter company is given time to fulfill the request of the claimant. This time can be changed between 9 to 12 months. If the barter company eventually fails to provide the goods or services that the member needs, the barter company is entitled to use the fund, which is called the member guarantee fund, to provide the goods or services needed elsewhere and to provide the barter company with the cost of the goods or services.

The information on the supply and demand forms is added to the supply and demand lists of the organization company. These supplies and demands are shared on the internet by the organization company to let all members informed. Thanks to this information flow, members of barter system can easily access to supply and demand, making it easy to shop.

With the barter membership contract, a current account is created by the organizer company to the member who enters the system. Thanks to this current account registration, member companies' liability-indebtedness status is determined in the system. The organization company sends the account statement related to the current account to the barter member at regular intervals and the member who receives the account statement may object to the organization company in written within the period specified in the membership contract.

The barter member usually has the right to change the amount of the goods that it provides, but some barter companies could restrict this. The member of the barter who is going to make changes in the properties that he or she has presented must inform the organization company in this matter, otherwise this issue can be considered as the reason for the termination of membership contract.<sup>4</sup>

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<sup>2</sup> Ayşe Dilşad Keskin, Barter Sözleşmesi, Ankara, Turhan Kitapevi, 2004, p.11

<sup>3</sup> Burak Arzova, Barter İşlemleri, 2000, İstanbul, Türkmen Kitapevi, p.14

<sup>4</sup> Arzova, ibid, p.16

The barter member peer to peer communications with the member who provides the goods or services that he or she wants to buy in the barter system, and makes the deal. In barter system, members can freely determine the value of the goods or services that they agree on the exchange of goods or services. The member in the supply of goods or services can determine the price as he wishes and can decide on the market price.

The barter member offering the goods or services receives a barter check at the transaction value from the buyer barter member in exchange to the credit of his or her account. Barter members receive a sales authorization code from the organization company when they make this deal. Transactions without this approval code do not correspond to the barter contract, but to a classical debts contract. Because of this, it is important to pay attention to the sales authorization code, as the seller and buyer will not change the current account of the firm and will not be accepted as a barter contract, but my opinion is that transactions made without obtaining a sales authorization code will not always be considered as a classic debts contract. That is to say organization company is also aware of the transaction between these two barter members. The barter member should be considered as an affirmative confirmation of the organization company's contracts that the organization company does not give consent to the contracts they have made between them, but the transactions made to the current account of the members are not implied. Otherwise, member companies may be suffered, and they may face the danger of termination of their contracts against the contract. At the flow of commercial life, I think that my opinion in this direction is fair because it will cause the transactions to become difficult because of the request of the written approval code for every transactions from organization company.

The member who is a member of the barter system does not need to show a guarantee for acceptance of the membership. The obligation of the barter member to show guarantees varies depending on whether it supplies goods or service to the system or demands goods or services from the system. Namely, if the system member is a creditor from the system because it supplies goods or services before the barter system, it can claim from the system without any guarantee as it has the purchasing credits up to the amount it can receive.<sup>5</sup> This purchase credit given to the barter member by the barter firm to buy goods or services from the system when entering the system corresponds to the credit balance resulted from the sale made by the member in the barter system.<sup>6</sup> Otherwise, in other words if there is a case where the member first requests the goods and services from the system, the barter system should provide guarantees as much as the purchase price. The credit limit given to the member of the system by the barter firm may be in the form of a real estate mortgage as well as a letter of guarantee issued by the barter member. The company which is a member of the barter system has to pay the debts to the system within the period specified in the membership contract. This time is usually one year, depending on the preference of the barter companies can be shortened or extended as well. If barter member can not pay its debt to the system on the date specified in the membership contract, the borrower will have to pay all debts to the organization company at once and in cash and with interest. However, in this case the conditions may be changed by several additional protocols between the parties. The interest of the debt can be deducted, commission can be decided not to be taken or installment possibility may be offered to the debtor company. Apprehension of the provisions to be applied in this case is at the initiative of the parties in the framework of the regulations introduced by the general provisions.

### **3. Barter Membership Contracts**

#### **3.1. Definition of the Barter Membership Contracts**

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<sup>5</sup> Türker Yalçınduran, Barter Sözleşmesi, Banka ve Ticaret Hukuku Dergisi, Issue 4, 2004, December, p. 144

<sup>6</sup> Arzova, ibid, p.16

Barter membership contract is a contract between barter organization company and the candidate member company. The parties have a variety of rights and obligations while these are not included in our laws they remain as obligatory contracts under innominate contracts. The main purpose of the barter membership contract is; in terms of the candidate member company to benefit from the barter system by purchasing goods or services, and in terms of the barter organization company to find new members for the system and to operate the barter system accordingly.

### **3.2. Rights and Obligations of the Barter Organization**

The most important task of the barter organization company is to expand the barter system by finding new members to the barter system. The organization company serves to ensure that the system is a continuous, active and unblocked system, while offering members a variety of goods and services in the system.

A current account is created by the organization company to the member signing the membership contract with the organization company and the control of this current account is provided by the organization firm. It is audited whether or not the borrower is responsible for the debts of the organization company by the contract, and the necessary measures are taken in adverse situations. The organization also has the obligation to regularly inform the members about the account status of the members.

At the same time, the organization company also records the information of the goods or services offered by the members in the system so that the other members can easily access this information and benefit from the system as they wish. The organization company constantly updates the data on the goods or services offered to the system, which helps the members to correctly evaluate and use this information. According to this information it is clearly understood that the organization company is under the rights and obligations of having more than one business.

### **3.3. Rights and Obligations of the Barter Member**

When the rights and obligations of the barter member company, which is the other side of the barter membership contract, are examined; it will be seen that the most important contractual obligation of the member signing the barter membership contract is to pay the debt to the barter system during the time specified in the contract.

The barter member company pays the debts to the system with barter contracts that contain various issues that the system members can make with the goods or services they have. Although these barter contracts are purported as contract of sale or contract of work, it actually constitutes the barter contract.

The barter system member also has the right to ask the organization firm to make new memberships in order to obtain the goods or services necessary for its operation. At the same time, this is the obligation of the organization company. The use of this right, which the barter system member has, ensures that the barter system is always active and up-to-date and that the system's trade volume is widened.

The most basic function of the barter member's right to request the presence of new members in the barter system is undoubtedly the convenience created by the system member for the payment of debts to the system. The barter member uses this right not only to pay the debt to the system but also to cover the need for goods or services from the system.

In classical barter systems barter member company has to trade goods or services without using money in intersystem exchanges. In some of the new barter systems, the barter member company has the right to use money at the rates specified in the barter membership contract. Another obligation of the barter member company is to

comply with the rates determined in the barter membership contracts in the barter systems where the money is not used and in the systems that allow the use of the money and to comply with this law during the system purchase.

### 3.4. Legal Nature of the Barter Membership Contracts

In Article 1 of Turkish Code of Obligations, where the legal definition of the contract is made; it is stated that the contract will be established by mutually and appropriately disclosing the parties' wishes. The most fundamental principle that governs contracts as it can be understood from this definition is the principle of mutual consent.<sup>7</sup> With the most classical definition in order to establish contracts, two mutually and complying declarations of will will have to be found.<sup>8</sup> Contract is a proposal called on occasion and comes into being with this acceptance.<sup>9</sup> It also means that anyone is free to sign a contract as someone wishes, as it is meant to mean that no one will be forced to contract as a rule.<sup>10</sup>

There are two main categories for whether or not they are regulated in the law of contracts. Contracts that are clearly defined in terms of their elements and the way in which these elements are arranged are called unnamed contracts whose elements or arrangement of law are not regulated by law.<sup>11</sup> However, it has also been stated that the law only requires that a contract be stated by the name, but that the contract is not sufficient for the contract to be accepted as a named contract, and that the law should contain substantive regulation.<sup>12</sup> I agree with the assertion supported by Mr. Kuntalp by example, and I prefer to use the distinction between nominated or innominate contracts when discrimination is made according to whether they are regulated in the law of contracts.

The barter membership contract and the barter contract, which are the subject of this article, have also emerged as a product of the above mentioned freedom of contract and freedom principle. Barter membership contract is not included in our legislation and therefore it is included in the category of innominate contracts. However, it can not be said that the barter membership contract is a typical contract. There are different opinions about the contract and the quality of it in our country that has chance to be implemented. For this reason, I consider the barter membership contract to be an atypical contract.

Innominate contracts are contracts which are not included in our legislation but which are bound to be implemented as a consequence of the principle of freedom of contract and whose boundaries are determined by the application of the judgments of the parties.<sup>13</sup> Innominated contracts in general terms are not contracts, but contracts created by the wills of the parties. Innominated contracts according to general acceptance categorised as combined, complicated, sui generis and incomplete contracts. Mr. Kuntalp distinguishes the innominate contracts as their own specific contracts and complicated content contracts because of the view that I have mentioned above.<sup>14</sup>

<sup>7</sup> Erdem Erdenk, İstanbul 2008, Legal Yayınevi, İş Hukukunda İsimli ( Karma ve Kendine Özgü ) Sözleşmeler, p.27

<sup>8</sup> Aydın Zevkliler ve Emre Gökyayla, Borçlar Hukuku Özel Borç İlişkileri, 2016, Ankara, Turhan Kitapevi, 16<sup>th</sup> edition, p.1.

<sup>9</sup> Hüseyin Hatemi ve Emre Gökyayla, Borçlar Hukuku Genel Bölüm, 2015, İstanbul, Vedat Kitapçılık, 3<sup>rd</sup> edition. p.30

<sup>10</sup> Mustafa Alper Gümüş, Borçlar Hukuku Özel Hükümler- Kısa Ders Kitabı, İstanbul, 2015, Vedat Kitapçılık, p. 3

<sup>11</sup> Erden Kuntalp, Karışık Muhtevalı Akit (Karma Sözleşme), 2013, Ankara, Banka ve Ticaret Hukuku Araştırma Enstitüsü, Türkiye İş Bankası A.Ş Vakfı, p. 3

<sup>12</sup> Kuntalp, ibid, p.4, Fahrettin Aral, Hasan Ayrancı, Borçlar Hukuku Özel Borç İlişkileri, Ankara, 2015, p.53, Yetkin Yayınları.

<sup>13</sup> İstanbul University, Faculty of Law, Department of Civil Law, Assistant Professor Saibe Oktay, isimli sözleşmelerin geçerliliği yorumu ve boşlukların tamamlanması, İHFM, C.LV (1996)

<sup>14</sup> Kuntalp, ibid, p.13

According to the most common definition the complicated contract occurs in a manner in which the law envisages the various types of actors in a manner not envisaged by law.<sup>15</sup> Complicated contracts are also subdivided into sub-headings, including contracts and combined contracts, which include double-handed, united, foreign acts.

Complicated contract is also called as a typical contract. As can be understood from this definition, it is a type of mixed contract in which one of the parties of the contract is usually under one obligation to act, in this case it is usually pecuniary debt, while the other is under multiple obligation of contract type.<sup>16</sup>

After I have made a brief description above, I have found that the contract closest to the barter membership contract is a complicated contract and is a combined contract of complicated contract types. The reason that leads me to this result is the barter system member and the barter organization company's acting responsibilities, which is the side of the barter membership contract. In the barter membership contract in which one of the parties as it is in the combined contract has more than one principal liability of the typical contracts, such as power of attorney, brokerage. The basic obligation of the member company is to pay a commission for membership subscription and barter contracts.

### **3.5. Form of the Barter Membership Contract**

As I explained the legal nature of the barter membership contract, I stated that barter membership is an atypical contract that is not regulated by the law of the membership contract and that it is a complicated contract which is a type of mixed contract from innominate contracts. A complicated contract is a contract created by bringing together elements of certain contracts in an unforeseen manner. It can be argued that the complicated contract is also subject to the likelihood that one of the elements brought together will be subject to the form. As barter membership contract is a complicated contract, it has been examined whether barter membership contract is subject to any kind of bargaining agreement in terms of whether it is subject to the barter membership contract and the typical contracts of membership contract.

In the barter membership contract, the most important activity of the organization company is brokerage. The brokerage contract corresponding to this activity of the organization company and the regulations in Article 520 of the Turkish Code of Obligations were examined and it was seen that the ordinary brokerage contract was not subject to any form but the immovable brokerage contract was subject to written contract.

Another typical element of the barter membership contract is the organization activity of the organization company, in the interests of barter members, independently. It corresponds to the provisions of the contract of agency of this organization activity. It has been stated that the proxy agreement, which is regulated in Article 502 of the Turkish Code of Obligations, is not subject to any form. For this reason, we would like to state that the barter membership contract, the acts it contains in relation to the contract of attorney, does not bring any regulation on the barter membership contract.

Typical elements of the current account contract are also included in the barter membership contract. The current account contract should argue that the barter membership contract is among the essential elements of the act. The personal opinion regarding the subject is that the barter membership contract requires that the current account

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<sup>15</sup> Haluk Tandoğan, *Borçlar Hukuku (Özel Borç İlişkileri)*, 1990, İstanbul, Evrim Basım, C. I/1, 6<sup>th</sup> edition, p.69

<sup>16</sup> Erdenk, *ibid*, p. 44

contract system is used and that the current account is kept in the barter membership contract but that the current account registration should be held by the organizational company rather than the current account relationship side in the current account of the barter membership contract makes the current account record of the barter membership contract atypical. For this reason, I am of the opinion that the subject matter of the current account contract must be adhered to when assessing the issue, and that the barter membership contract of the writing contract of the current account contract should not affect the barter membership contract.

Explanations that I have made about the form of the barter membership contract above, the immovable property activity of the organization company appears. For this reason, the contract name shall be subject to the written form requirement.

### **3.6. Solution Methods for Disputes Arising from Barter Membership Contract**

Barter is a contract with an unnamed name, which is not regulated in the contract of membership, and which causes both sides to borrow a debt. For this reason, it is necessary to first look at the way in which disputes are resolved in nameless contracts.

The first place to apply for disputes related to an unnamed barter membership contract is the text of the contract itself. The text of the contract usually sets out a number of points that may be subject to disagreement, but the regulations in the text of the contract may be considered inadequate as it is not sufficient and may be invalid as it includes provisions contrary to the law. Some of these reasons are inconsistent with the sanction of the general transaction or general ordering provisions. This and other similar reasons can lead to a contract gap in barter membership contracts.

The barter membership contract of mixed nature also includes acts of typical contracts in accordance with a characteristic of complicated contracts. I accept that as a rule, the typical contracts can not be applied to the innominate contracts<sup>17</sup>, and I do not agree with the principle of loyalty to the contracts, I agree that the typical contractual provisions to the extent that it falls appropriately can be applied to settle any possible disputes. What should be noted here is how the typical contract elements are in accordance with the barter membership contract. While this assessment is being made, it is necessary to consider the similarity of the typical contract provisions to the provisions of the barter membership contract, and the benefit expected from the typical and atypical contracts, as well as the purpose of the matter and judicial decisions and contracts.<sup>18</sup>

Although specific contracts can be applied to complicated contracts to the extent that specific provisions fall in place, how to implement this practice should be discussed. The opinion that I am closest to the views on the subject is the theory of individual application of the statutory provisions. Because the use of the acts of the typical contracts that constitute the mixed contract will be taken away from the atypical contract. It would also be inconvenient for me to find the elements of the typical contract within the complicated contract and for the creation of a law to be disputed with these provisions. For this reason, I believe that the typical contract provisions appropriate to the settlement of this dispute must be applied to the dispute, taking into account the central dispute, in respect of the atypical nature of the mixed contract. The Barter Membership Agreement also includes typical contracts such as a proxy agreement, a brokerage contract and a current account contract. Provisions relating to these typical contracts

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<sup>17</sup> Kuntalp, *ibid*, p.226

<sup>18</sup> Kuntlap, *ibid*, p.190

may be applied in accordance with the principle of individual application of legal provisions to disputes related to barter membership contract.

The barter membership contract is a contract that burdens with debts to both parties. The contract is based on the performance of the debts and various disputes may arise during this process. Typical disputes that will arise at the end of the debt will be resolved within the framework of the general provisions of the Code of Obligations. Because barter membership is an innominate contract without special arrangement in the contract, but the general provisions of the Code of Obligations also apply to this contract.<sup>19</sup> For this reason, it is possible to fill the vacancies in the contract with the special and general provisions of the Code of Obligations.

If there is no direct or comparable provision in accordance with the theories referred to above in the Barter Membership Agreement, the contractual space shall be filled by the judge by law.

#### **4. Barter Contract**

While there are lots of opinions about the barter contracts, in my opinion barter contracts are contracts that the companies that are members of the system for every contract they make to pay their debts to the system. Some authors refer to these contracts as individual contracts or tangible contracts.<sup>20</sup>

Barter contract, as I mentioned above, is categorically defined within the barter system and is an independent contract within the system apart from the barter membership contract. Barter contract is atypical contract which is complete with the approval code of the organization company, in which the exchange of goods or services between the members of the system and the payment made by the members to pay the debts to the system, without using money. The member who receives goods or services from the system with this contract does not have to pay the member of the system that has obtained his or her performance in person and can not pay the debts arising from this exchange. A member who provides goods or services to the system in a similar manner and which allows a member to benefit from such goods or services can not claim the right of receipt after the purchase himself or herself and can not claim the right to receive such money in the same manner. A member's right whose performance constituted in the barter contract to claim is equal to the goods or service to be obtained from the system.<sup>21</sup> As you can see, members of the creditors and borrowers who make a barter contract in the system face a unique reciprocity relationship. In addition to being fixed that the member who provides the system member has a right to receive the claim, the borrower can request the system to the system from any member of the system, not from the person who is acting as if it is in the typical contracts.<sup>22</sup> In this way, members can be creditors in a barter contract while falling into the debtor position in another barter contract.

##### **4.1. Rights and Obligations of the Parties in the Barter Contract**

A member who wants to obtain goods or services from the barter system or who pays the debts to the system can supply the goods or services to the system and may contract with another system member who is in compliance with this demand. The most important condition for the barter contract to be made is to join the barter system with

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<sup>19</sup> Kuntalp, *ibid*, p.222

<sup>20</sup> BELEN, Herdem, *Barter Sistemi Hukuki Yapısı ve İşleyişi*, İstanbul, 2007, p.7.

<sup>21</sup> *ibid*, p.113

<sup>22</sup> Pieper, Niklas, *Die rechtliche Struktur bargeldloser Verrechnungssysteme, unter besonderer Berücksichtigung von Barter- Clubs und LET- Systemen*, Berlin, 2002, pp. 117-118, Belen, *ibid*, p.113.

barter membership contract. Members of the barter system may sometimes request a goods or service not included in the system to meet a requirement in the system. In this case, a single commodity or service will be purchased, but in order to meet the needs of the system members, the commodity or service is requested to be a member of the member system and the membership of this committee is terminated after the commodity or service needs are met.<sup>23</sup> As it is clear from the explanations, it is necessary to sign the barter membership contract and join the barter system to make a single barter contract.

Although barter's contract is an innominate contract, the parties have to comply with the general provisions as they are in the classical Code of Obligations contracts. The parties to the barter contract must comply with these provisions in the barter membership contract and the barter contract,<sup>24</sup> as they will not be able to make an innominate contract against the law, morality, personal rights and public order.

Since barter contract is not a typical contract, the rights and obligations arising from the contract of the parties will be determined first of all with the barter contract provisions between them. The main contract that must be considered before the provisions of the barter contract is the barter membership contract, which sets the system rules and the obligations of the parties in the barter system. Since barter membership contract is a framework contract, it is necessary to observe the provisions of this membership contract in every barter contract.

In addition to barter membership contracts, barter contracts that include typical contractual acts and barter contracts and corresponding parties to barter contracts may also be applied to non-contractual disputes when the contractual obligations of the barter contract are determined. For example, the barter contract with the provisions of the sales contract made within the system will be applied to the extent that the provisions of the contract of sale fall in accordance with the contract. Similarly, a member who supplies goods to the system has the right to benefit from the provisions of the defamation clause against the defector.

#### **4.2. Legal Nature of the Barter Membership**

The barter contract is an arbitrary contract type in which the barter system exchanges goods or services with each other in order to pay the debts of the members to the system. A member who wants to purchase goods or services from the barter system obtains the desired product by communicating with the member who provides the goods or service requested by the system. It is sufficient for the establishment of the contract to provide the approval code of the organization company so that the parties can comply with each other and acquire the quality of a barter contract. The approval code of the organization company allows us to treat the contract as a barter contract. This is because the barter organization company does not issue this approval code and is not a contract barter contract, it is a typical Code of Obligations contract.<sup>25</sup>

As can be understood from the above description of the barter contract, barter contracts are established with the parties' wishes and the approval code of the organization company. After the barter contract is established, the member who requests the goods or services receives its demands from the system. The current account of the member who obtains the goods or services from the system is recorded as a debt record, while the account of the

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<sup>23</sup> Aslan, Sinan, Barter İşlemleri ve Muhasebesi, Vergi Sorunları, September 2004, Issue 192, p.147

<sup>24</sup> Oktay, ibid, p.3

<sup>25</sup> Belen, ibid, p. 82

member who contributes the act is deducted. Thus, the two sides are burden with debt. For this reason, the barter contract carries the character of a contract that generates debt as contract type.

The barter contract is an innominate contract that is not regulated in the law like the barter membership contract. Incomplete contract is with the definition of Prof. Dr. Mustafa Alper Gümüş a contract that contains elements of a specific contract type enacted by law with one or more elements missing. When demonstrating the issue the author stated that the contract without constituting any charge (payment) in it is an incomplete contract, not a contract of work. The author further stated that for a contract to be considered as an incomplete contract, the legislator must have not established a contract with a missing element as a named contract, for example, if the contract is not a lease, there will be no incomplete contract.<sup>26</sup> By this definition, I would like to state that I am convinced that the barter contract is close to the contract which is imperfect contracts under innominate contracts. Because the barter contract sometimes involves the actions of a sales contract, which is a typical contract enacted by law, but with the characteristic of reciprocity inherent in the sale contract, the characteristic of reciprocity specific to the barter system, and the fact that the right of the member to receive the act is not money. For this reason, the typical contract of sale defined in the barter contract is incomplete contract with the reason that several elements of the contract can not be transferred.

#### **4.3. Form of Barter Contract**

Under this heading, the form of the barter contract will be examined. The reason why I give a headline to the form of the barter contract is that it deals with a wide variety of goods and services exchanges. As a rule, the barter system can take advertising services that are not subject to the rules of the company system, as well as real estate exchange which is officially subject to purchase and sale as a rule. At this point, it give rise to the question of how the barter contract should be.

As barter contract is a innominate contract, it is also a factor affecting the contract. As a rule, it is not possible to apply the provisions of the typical contract to the innominate contract, since it is not regulated in the laws, but as mentioned above it contains the missing elements of the contracts defined in the barter contract. For this reason, it is necessary to apply the above-mentioned barter contract to the extent that it conforms to the barter contract of the provisions enacted by law of the typical contract it contains. In this way, the barter contract will affect the typical contracts it contains.

When determining the form of contract in innominate contracts, it is checked whether the typical contracts contain within the innominate contracts are subject to any form, and the most severe form of the typical contracts that are subject to the form is determined by the innominate contracts. To demonstrate in the light of this information, a member company that wants to acquire a movable property through a barter contract may complete the barter contract by agreeing with another member of the system that meets this demand and by obtaining a sales approval code from the organization company. In this barter contract for the exchange of movable commodities there is no condition for the establishment of the contract. On the other hand, when the barter contract is a real estate exchange, the parties will need to do so in accordance with the official written form.

### **5. Conclusion**

Barter membership contract and barter contract are atypical contracts arise from the barter system. As put in detail above, barter membership contracts especially differentiated from atypical contracts by having current account

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<sup>26</sup> Gümüş, p. 10

registration and its own proxy relationship. Barter organization company's brokerage activity in the barter membership agreement is largely in line with the typical arrangement.

The barter contract is a type of contract in which the transactions are made between within member and system members are paying for their debts and money is not used. The non-use of money in the barter contract and the lack of a mutual debt-to-lender relationship to the contract are the most fundamental differences that distinguish the barter contract from the typical contract that resembles it. A unique reciprocity relationship by including exchange contract, contract of work and many other contracts remove it from typical elements and place it into the barter contract form.

The Barter system is a system that is highly ambitious and has a high potential for development, as it emerges as an alternative financing tool to the emerging economic monetary policy. Legal arrangements related to international trade in Turkey have made it possible for the barter system to expand and develop domestically, but researches have shown that the barter system has not yet caught the popularity in Europe and America not in Turkey. While there are various reasons for this situation, I believe that the standard variations in the quality of goods or services make trade in our country mostly on cash.

I believe that the barter system can be regarded as a reliable place for itself and as a reliable financing model in the developing economic system. The name of the organization company must be able to operate the barter organization perfectly and make an effective effort to grow the company. All of the books and articles on the barter system emphasize this point. I believe that if the barter organization company fulfills its mission perfectly, possible disputes will decrease rapidly and the barter system will become a very important place in our country.

The barter system can be a solution to the stagnating commercial life, or it can be used as a solution for the continuation of commercial life in countries where economic embargoes are applied. However, as I have pointed out above, all the positive aspects of the barter system I have mentioned depend on the existence of a reasonably well functioning system.

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