

Rules Concerning Individuals Prohibited from Transaction

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ABSTRACT

The case of prohibition of transaction for real or legal persons is a common case in notary public's offices. Notary public's offices avoid doing their routine duties in creating documents when they encounter personal names that their legal actions are banned by judicial authorities and related circulars have been announced. Studying the legal basis of individuals' transaction restrictions, the limitation of basic conditions of transaction correctness, the position of legislator's Injunctions to stop transactions and similar issues, bring this point to mind that doing transactions and transferring properties in these situations is correct, and such injunctions cannot form a reason to nullify the transaction.

KEYWORDS: Rules, Prohibited from Transaction, No deal

INTRODUCTION

The legal actions are divided into contracts and unilateral obligations. According to article 148 of civil law, contracts and unilateral obligations may be necessary, permissible, optional, unconditional or suspended. Other divisions of contracts such as replaced and free contracts, definite and indefinite contracts, possessory and bond contracts, consensual and ceremonial contracts and soon are also have been concerned in speeches and writings of legal scholars, that respecting article 190 is the common point of all these contracts with any title and conditions. According to article 190, following conditions are fundamental to the correctness of any transaction:

1. The intention of parties and their consent
2. The legal capacity of parties
3. A definite object for transaction
4. The legitimacy for transaction

In other words the lack of any of these fundamental conditions discredits the correctness of the transaction and prevents its influence, whether the conditions set by legislator concerns the individuals and transistors or transacted properties. In a more clear statement, the validity of contracts is the basis, and any verdict to discredit the contracts needs a rule; but that the decision of legal authorities in prohibiting individuals from transactions reveals the invalidity of transactions of such persons or until the lack of one of these fundamental conditions the transaction is under the general law and valid, or without the permission of proper authorities is considered invalid otherwise is valid is the subject of this paper that will be presented in two parts.

Section I: persons Prohibit transaction.

Section II the ruling party transactions Prohibit transaction.

Section A: Persons Prohibit Transaction

A - Definitions

1 - A - Prevented

All persons are essentially population fruition. That can be copyrighted, but may demand the population, the ability to run, no. People who do not demand the population, called Prevented.

Prohibition the word means is prohibited in legal terms is Prohibited person in possession of property and its financial law and to perform legal acts, such contract or Ayqa;

Therefore, the Prevented are due under age to age or loss or impairment of mental powers cannot Take over their affairs freely and legal actions that are necessary for human life, do and hence the need to support the law. according to article 1207 of the Civil Code Moving Stone, "underage" "Insanity" and "Sfh" is due to lack of or adequacy of the person's will, Transition act with the establishment of the Stone and institutions for the administration of its forecasts, Support for underage parties and demented idiot has tried

Prohibition against this group of individuals philosophy that rules prohibition, protection of their rights, Another group of people are prohibition Because the sentence prohibition them;

Protection of creditors' rights and the prevention of fiscal changes it is detrimental to the creditors, Bankrupt businessman as Prohibition the lawyers of the "Prohibition suspicion" brand name (Goldouzian, 2007:56)

Thus the prohibiting those article 1207 of the civil code. Besides having commonalities Prohibited transactions with persons (Including the prohibition interference or restriction On your property) Inclusion of persons discussed in this note, abroad and "Bankruptcy" As also in Article 1207 of the Civil Code not to mention the toy prohibited, If the trader is Bankruptcy will stop name the trade legal issues and the civil rights issues; and if the other traders, the "Insolvency" is called.

Insolvency relating to civil rights but civil rights stone is not the only insolvency and insolvency and bankruptcy law and the amendment approved 25/08/1310 expedite trials is understood. Article 37 of the Act provides: "In all the powers and rights claimed financial insolvency bankruptcy," All authority in law and insolvency claiming, the use of the payment of his debts; Creditors in case of insolvency claims and special bailiff, Claims in bankruptcy, deputy legal claims of insolvency or bankruptcy and have the right to place her the use of the powers and rights. " this is the concept of if insolvent or insolvency claims Powers and rights to pay their debts to do battle, to his creditors Ghaemmaghami. They have the authority to do but it insolvent the use of authority denied their rights and left and he has not considered insolvent; this is why the Article 1207 of the civil code. Insolvent has not named among those banned; therefore, no transaction parties among any of the major groups persons prohibited from seizure of their property are not considered. (Jahromi, 2008:256)

2 -A –No Deal

Banned from trading It is not meant to define specific and the examples it can be stated Prohibited transaction that is personal whether natural or legal the effect of their actions on behalf of the competent judicial authority, is prohibited from interfering in their property; The ban may Refer to all deals (Moussaoui. Abbas, 2005:321) (Any legal action or contract) or transporter turnovers however, it deprived the demandist the right dealer.

It should be noted that this ban is about people no assets and prohibiting on the property as "Detention or seizure of property.

B-the legal basis for the prohibition for the first time, After the Islamic Revolution with the aim of preventing the transfer of property holders of public office and public in the former regime, The Justice Department shall (Moussaoui, 2005:114)

The issuance of the letter no. 8678/10 Dated 30/11/1357 Add resign their register and official follows: "The document set on transactions and transfers, a gift, a peace agreement declaration, power of attorney and any other documents the movable and immovable property and privileges (Tabatabai, 1996 :125) and inheritance and other assets, prime ministers, ministers, deputy prime minister, deputy ministers, rulers army and police and gendarmerie, heads of organizations and government agencies and managers of state companies and banks, mayor and deputy mayor of the capital, mayors and first class city, governors and governors-general, ambassadors, heads and representatives senate house and the national council for the year 1342 after the above positions Were employed, Strictly avoid"; Under this directive, the main duty of official documents Refrain from setting and document concerning the entities nodeal during the past year is faced with changes and adjustments.

How law enforcement Article 49 constitution Islamic Republic of Iran Approved 05/17/1363 the government is obliged to refund illicit wealth of the including usury, gambling, misuse of endowments, abuse of contract and government transactions, The prosecutor has a duty the asset of Individuals Or legalist the former regime had somehow or the of jobs is prohibited, has as another basis the export ban People deal in the courts is invoked.

The second part of Article 345 BC. M Population monitoring the condition of the parties to the transaction The acquisition of sales and price sometimes some legal basis Ban is introduced But it seems The purpose of "Each of the vendor and the client must. In addition to the legal population to deal Population or to capture the sales price is also. "(Khoeini, 2008:57) The vendor is able to deliver sales. The law does not prohibit the possession of as a result of the financial executives arrested or provide a third party's right to be or property of the bankrupt's creditors whose rights reserved he cannot make the property transaction contract defect in the property that is Although owe their origin to be the owner of the property. It is a condition of the deal terms Neither of the parties, the terms of trade

C-the establishment of a ban, a measure of supply?

As a matter of law, safeguarding measures approved 02/12/1339; "Safeguarding measures are Court action to prevent repeat offenses (misdemeanors or felony) will take on dangerous criminals. "(Najalagh Akbar Hamid 2009:87)

Dangerous offenders are experience mental and moral qualities quality and commit crime; Them the offense Mzan In the future, should whether they are legally responsible for or irresponsible. Security verdict When the court is allowed if someone has committed a crime Safeguarding measures, will Types Some, such as the maintenance of liberty depriving criminals insane Almshar disrupt criminals and the insane asylum, Some restriction of liberty, such as the prohibition of employment or business or profession to earn a certain Some are known to financing activities Such "dangerous objects recorded"

"Prudential guarantee" "Close the IIS" "Abbott and deprivation of the right to mandate and monitor» And "release orders" The safeguarding measures contemplated in all instances, Evidence of a trade ban that has been

approved by legislators, not eat. Therefore, the the ruling principle of legality of crimesAnd punishments and safeguarding measures,you can leave comments to the subject matter of these safeguarding measures

D - Do not ban the trade; denial of civil rights is true?

Article 17 of the code. M.. A., "The privacy rights of" instances of discipline or retribution by the government in order to maintain social order and respect for violations of regulations and government policy is determined, it is accepted that like other penalties such as the original penalty "sentence", "fine", "holiday businesses," "canceled license" and "exile" is about to cancel the order, the court also held that Article 19 of the law anyone due to general crime deterrent punishment to punishment or sentenced to imprisonment or death as a complement inhibitor, while the social right to deprive provision an Article 62The same rule again,Deprivation of social rights, consequential punishment for criminal conviction(Ahmad Ramezani 2009:98)

1 - "The crime subject to the amputation»

2 - "The number of crimes subject to the whip" and

3 - More than three years imprisonment "as

In paragraph 8, the ban has set examplesIn all three cases, including the denial of civil rights,

Punishment "main", "UPDATE" or "incidental", the according to the resolution, civil rights, social rights,And as to the contractAs a civil right, and finallyNo explicit ban on the trade as the social narrow interpretation of the defense in criminal law, it appeared, you cannot ban people deal as examples of blatant denialFrom civil rights, to be.

E - the decree bans tradeIt is also extended to interactive?Basically establishing trade ban person is a precautionary measure to ensure In order to protect property and prevent the transfer of personal property Prohibited transaction arguably the It is being illegitimate business, shall be taken. Contrary to what the purpose of the ban incapable of defending individual rights andprevent the violation of the rights of minors and non-Rashid is insane. On this assumption, a prohibited transaction] buyer or interactive With the purchase, the gift of peace and acceptance Added on its property And may facilitate the possible future sentencing decisions And restrictionIn this case, it is at odds with the philosophy ban.

Because on the one hand The binding of sentenceTrade bans and freezing the assets of a person's needs Payment of salaries to government entities,Face on the other hand,Sentence against the acquisition of propertyTo accelerate the execution.(Nasrzadh.Hooshang, 2002:87)And facilitate access to it, In addition, The second downs bkhshnam no. 130/10 dated 14.01.1358 Department of Justice"If the buyer set the document Announce the seller people are not subject to the directive(Directive to prohibits anyone has Almamlh)

And with full knowledge Of this deal and tried to set the document In the opposite case, He is charged with the responsibility ofIn contrast, theMoore to the actual value of the transaction, Is committedgovernment deal Or equal to its actual valueOther property of the buyer isThe transaction is permitted ", With a clear separation of the logical Position of seller and buyerAnd emphasis on customer engagementAccountability to public authorities If the seller is not allowed to be traded Due to the lack of urgency and commitment to the sellerProhibit the buyer deal Such commitments(If found contrary to the government's commitment to reparation)Issues are ruled out.Meanwhile ban which includes restrictions on the freedom of individuals Set of transactions and documents areCompliance with the rules and regulations must be "narrow" and "defense" interpretation So be sure to stop In this case, Trade ban extended sentences other transactions cannot be legally justified.

Part II: the ruling party transactions prohibited transaction

Law enforcement personnellIn full compliance with the law mayIn signing the form,"Correct" or not, the result of compromise,No matter it is,And prohibit the unlawful penetration of compromise, "Void" or other authorization is necessary.In this case the "trauma" would be.Regardless of the lack of legal basis Permit the exclusion of persons Demand rights of ownership(Almamlh banned by the parties)Person to engage in legal practice, Specifically deals transporter In the meantime,Forbidding judicial authorities, What is the verdict?

Maybe at first glance,Because of the compromise legislation prohibiting unlawful Seem, Such transactions must be Sentenced to be considered valid. Otherwise they, Philosophy that supports the ban Rights other persons And maintaining the property. And to prevent their capture is unsound, Disappears.Consideration the views of other "Trauma" to recognize persons trading deal. According to this view, The main purpose of the ban state, Prevent inconsistent transactions and protect the rights of persons Who have suffered other illegal acts. So long as the owners of either the government or entities,No deals have not rejected the deal, Transaction is not void And if Enforcement, In such transactions, All conditions are having a good deal; As the transactions relating to assets held And is set banned.

The third view on the propriety of the transactions Deal or no emphasis In support of his theory cites the following reasons:

(A) - forbid such deals do not result in corruption;As the principles of science books detail, has been discussed,"Correctness" of Trtb desired effect is And the optimal order of the same is rationally acceptable And "corruption" is Trtb the desired effect on the subject, therefore, if the desired effect On the respective transaction

dates, Read the correct position, For example, the task of "selling" Trtb of the property. If the property is We say that the deal is valid;But if we have the desired effect, the property, The sales are not done applied, the transaction is called degenerate

The analysis of the regulatory provisions forbidding And its relationship to health Great deal in terms of corruption andShiite scholars and jurists, The five promises are:

- 1 - prohibited transactions and in worship,Corruption is absolutely indicated.
- 2 - prohibited transactionsAnd strictly forbidden in worship: Nine Lgha not religiously. No evidence of corruption.
- 3 - forbidding the worshipTransactions and corruption religiously appropriate
- 4 - forbidding the worship is implicated in corruption But corruption does not imply prohibited transactions.This quote is elected Shiite clerics.
- 5 - forbidding the worship of the transaction, Corruption is implicated only in the senseTo prove corruption implies trade,It is said thatIt is the duty of every wise legislatorWith their orders and interdict personsMaterials to guide their actions and corruption.Therefore,

The decree also prohibited any transaction isOnly by removing all traces of it can be achieved. In each case, the legislator It prohibits the compromise Corruption must be said that the alliance has more than Msalhsh and forced the parties to create legal relations law.

In addition to the provisions forbidding they should not be added together And inconsistent, Must be two contradictory effects. So, as a result, accuracy is traded;The injunction also requires proof Corruption is the deal in contrast,In rejecting this implication, It is argued legislation that prohibited certain Act under sanctions Eagle and punishment is necessary But the deal does not imply corruption.Because there is no barrier legal action does not erode the rule ofAnd yet it is also committed to repay(.Goldouzian,2001:319)

However, based on the principle of freedom of opinion and speculation will also be limited. Moreover, properly deal with the subject matter of the resulting Amtsal, while corruption is a prohibited transaction defiance and violation of the law is. The validity of the law that deals with corruption in the contracts does not prohibit Mlazmh. In other words, Except that Legislation forbidding Refers to one of the and health conditions of the deal Or where a commitment or transfer inalienable right to comply with law, the forbidding, indicating no corruption. and so, in the event of contractWith regard to the prohibition of Prohibited transaction may be committed, Penalties are incurred due to the violation of the rule, But to obtain explicit invalidation of marriage or lack of influence, Established and will continue.

B- a commitment to the rule of contract provisions

Based on the binding force of the contract, including the "will of the people" or "moral rules" or "social interest" to know, from the provisions requiring contracting parties must respect the dignity and human freedom, moral and religious advice of "contracts to true" and "faithful to fulfill the contract is" rationally based on the regulation of social and economic structure in the shadows keeping covenant, they insist on avoiding perjury

In addition,Accordance with Article 219 BC.M.: "The law requires that contracts be located the binding is between Mtamlyn and its surrogate, Unless the parties consent. Aqalh or be terminated due to the law "; The legal matter "Authenticity necessary" is named On this basis, each contract is required unless the license contract as a whole, Can be established or terminated in certain cases, Trades peopleTransaction prohibited by this rule of thumb to follow, So far proven invalid, Are required(Ramezani, 2006:68)

C - the truthAccuracy is against corruption and falsehood and the jurists, the mean accuracy having the desired effect As a selling leadTransfer price and is Mby And leasingThe property is of interest to tenants;If sales are done It seems that Some of the conditions is not trueOr financial lease contract; Will probablyObstacle in its lease there is in these cases, the accuracy of the deploying Contract and the right to know stipulated in Article 223 BC.M..The "Health deals» It turned out to be corrupt,Another reason is the credibility of those transactions Without an explicit legal basis and sentenced to spendJurisdictions the transactions are prohibited. Because in these cases, To doubt the accuracy of such transactions, To genuinely care, removal is doubt.

Conclusions

1. According the general rules of contracts, the observance of fundamental conditions concerning the validity of transactions in signing contracts is necessary and only the verdict of prohibiting individuals from transaction is not a fundamental condition and its existence cannot discredit the contract.
2. The invalidity of transactions of individuals prohibited from transactions except in legal cases has not a legal basis, and any verdict to invalidate these transactions in general is incompatible with the interpretation of criminal law in favor of the accused person.
3. The legislator's prohibition in special cases on the contrary to the relative verdict shows the invalidity of agreements leadBetween individuals, and in many cases we cannot take this as a basis for invalidating the

- transaction, just in case that prohibition is used as a gerund i.e. in legislator's view it cannot provide possession causes annulment of the transaction and the object of transaction is not included in such a case.
4. The prohibition of transaction is concerned with transactor and generalizing it to the purchaser's transactions needs a specification.

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