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LEGAL CONCEPT AND ESSENCE OF STOCK IN COMMERCIAL COMPANIES

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ABSTRACT

In current societies stock is one of the important articles of asset and forms main part of persons properties and play prominent role in economic and industrial prosperity and since stock has propertiness and primarily and regularly are transferable. And owner based upon his property right can have any possession on it, therefore regarding stock inherent feature and property qualities, anyway some trades takes place to living or dissolved commercial companies. Therefore regarding different special terms of contracts in matter of trade, in this research determining situation of stock trades and accessing a correct and perceivable result and recognizing stock essence and its position among properties are discussed. And we achieve this result that stock as a right that company assigns to stockholder in return for their product is a movable property and regarding expansiveness of term "actuality" in commercial common law, it is accepted and can be traded as an actual property.

Keywords: Legal Concept, Stock, Commercial Companies

INTRODUCTION

With evolving commercial companies stock arises a new property and regarding ever-increasing growth of commercial companies, large quantity of country capitals converted to stock and though stock is basically and inherently transferable and similar to other financial properties and rights is contractually and forcibly transferable and nowadays considerable amount of trades assigned to stock transmission but despite importance of this issue in commercial rules and regulations stock legal essence and its position among

properties is not distinct. Therefore legislator silence and necessity of clarifying stock legal essence in order to determine contract type that make possible to accomplish stock trade in its frame and its legal effects, we intended to examine stock legal essence as much as possible regarding current laws and rules and customs. Therefore this research intends with relying on clarifying stock legal essence and determining its position among properties, specify whether stock is new validity property that does not stand in classical properties classification or can be find a traditional position among properties by clarifying its essence? Therefore in this article stock definition and its legal essence meaning will be explained and relying presented definitions and legal essences stock position will be determined among properties classic classification.

1- Stock concept

Stock in word and in law expressions is used in vast concepts and has several classifications whereby we examine stock concepts.

1-1 Stock lexical meaning

word “stock” is a term used in Arab and Farsi literature and one of the meaning that has been used in Arab literature[i1] is: lottery stick or gamble, share, lot, benefit; money or something that is earned by gambling, stock papers of one company that has determined share of factory or company and has certain value, a document that has stamp or certain value.

1-2 Stock meaning in civil law

Stock is not defined In Iran civil law but article 571 of civil law in company definition says: company is gathering of numerous owners' rights in one object by joint ownership.

"It can be inferred from this article that few people in common ownership are owner of one property, it means everyone have ownership right on every part of property" [2] , therefore common property partner has actual right of ownership on whole of the property. But this ownership right toward common property is by joint ownership and it is not that after mixture of property, whether this mixture was optional or forcible, partner ownership right toward common property dissolves.

3-1 Stock meaning in commercial law

[1] Aniss, E. , Mojntasar, A. Alsavaheli, A. Ahmad, khalaf. (2007). Dictionary Almojam Alwasit(Arabic-Farsi). Tehran: Islamic publication.

[2] Esskini, R. (2005). Trade Law- Commercial companies. Tehran: Samt publication.

As discussed before, stock meaning in civil law term is not too far from its lexical meaning. But stock meaning in commercial law has complete difference with lexical meaning and term meaning in civil law too. In commercial law legislator has defined stock and in fact it enacted itself the law, thus a legal entity is created[1].

Article 24 in defining stock expresses stock is a part of company that specifies its owner participation, commitments, and benefits. Stock paper is tradable document that represent stocks number which its owner has in company. From last-mentioned article definition new meanings for stock world is conveyed that differs from stock conventional meaning in civil law and with a little attention in this definition we conclude that stock has three concepts:

A- Company capital

Stock is a part of company capital, capital in the company divided into parts that every part is called stock. It should be concerned that the article context doesn't mean stockholder has ownership toward part of company capital. Ownership of company capital belongs to company that itself has legal entity and has capacity of enjoyment and vindication. Therefore after arising of company legal entity , all partners product allocates in company ownership in fact legislator by this writing style in the article has intended emphasize while naming divided parts of company capital, after company constitution partners have not actual right of ownership toward its capital. In other word because stock companies are known as capital companies, legislator defines stock by company capital.

Some lawyers believe[2]: above definition of stock in the article 24 is not devoid from fault because term "stock is part of company capital" apparently means stockholder is owner of some part of company capital while this term contradicts with article 583 that knows all mentioned commercial companies as having legal entity because this sentence necessitates ownership of all company capital is exclusively in company ownership and no one except company (legal entity) is not its owner.

B- Owner rights and commitments

In this respect stock is representative of all stock owner right and commitments in company and has three features:

[1] Mohammadi, A.(2005). Principles of Islamic law deduction. 23th edition. Tehran: institute of publication and print of Tehran university.

[2] Sokuti Nasimi, R. (2002) investigation of legal essence- sentences and effects of stock trades of commercial companies (with comparative study in Iran and U.K law)(doctorate dissertation). Tarbiat Modarres University.

First: stock specifies partner participation level in company, stockholder is not owner of part of company capital but regarding stock amount that has brought to company has participation right toward whole of company capital.

Every stockholder according to number of stock that owns has vote and participation right in company and any kinds of decision makings right as well. However, in cooperative company number of stocks doesn't represent votes number, as some experts believe[1] "cooperative company stock doesn't represent members vote right level in public societies because in cooperatives each member regardless to stock amount just has one vote.

Secondly stock specifies stockholder commitments level toward company. The only commitment of stockholder in stock companies is its responsibility in stock nominal amount payment. For the same reason article 1 in this issue expresses that stock company, is a company that its capital is divided to stocks and stock holders responsibility is limited to their stocks nominal amount.

Thirdly, stock determines partner benefit and incomes amounts from company activity. The benefit earned by company divides among every stockholder in proportion of stock number they have. Therefore each stock in regard to its owner total capital determines how much it can participate in public society and vote expressing, and how much benefit from company activity attribute to it, and how much financial commitment it has toward company if it didn't pay whole of stock amount[2].

It should be considered that stock in addition to benefits determines eventual loss amount for its owner too. One of the lawyers says in this issue: "stock determines stockholder eventual benefits and losses in company which it can be determined by number of stocks[3].

C- Stock paper

Whatever deduced from article 24 while every equal part of capital of commercial company is called stock, stock is index and representative of partner participation and commitments and benefits in company too and in other word stock paper is tradable document that shows stocks number that its owner has in company. One of the lawyers

[1] Hassani, h. (2003). Cooperative Law and commercial Law. Tehran: Mizan publication.

[2] Hassani, h. (2008). Commercial Law. Tehran: Mizan publication.

[3] Eftekhari, J. (2007). Commercial Law (theoretic and practical) commercial corporates. Tehran: Qoqnus publication.

says[1]: " stock has two meanings, one is rights that partner has in company and other is negotiable paper that affirms this right and is its representative too."

Stocks paper must be uniform and printed and have serial number and signature by at least two persons that statute determines (managing director and one of the members that is usually one of the stockholders). Besides mentioned terms, stock nominal amount must be equal. According to article 26 these points must be inserted in stock paper:

1-Company name and its registry number in companies offices. 2- Registered capital amount and its paid amount. 3- Determining stock type. 4- Nominal amount and its paid amount in number and letter. 5- Stocks number that each paper is its representative. As long as stock papers are not issued, company gives stock temporary license to owners that shows number, type and paid amount of stocks. This license is as stock and company within a year after payment of all stock nominal amount is charged in issuing stock paper and deliver it to owner and restore and annul stock temporary license. It must be concerned that as long as the company doesn't achieve registration issuing stock paper or even stock temporary license is prohibited.

2- **Stock legal essence**

In some laws, stock inherent features is alluded. Such as item 3 of article 630 law if legal trial principles (annulled) approved in 1906 and it know company stocks as movable properties and also article 67 of law of civil sentences implementation approved in 1977 that situates stock as movable properties but in spite of clarifying stock common law essence from viewpoint of contract types which stock transfer take place in and effects and sentences of these types of trade is important, in trade law approve 1311 and amendment bill of part of law trade approve 1932 and other regulation there is no explanation about stock common law essence , for the same reason lawyers have expressed different opinion in this regard.

Stock as a part of company capital

"capital of every company divides in equal parts that every part is called stock"[2], stock in this respect, is name of company capital part and should not deduce from article 24 context that stock holder is owner of part of company capital because it contradicts to article 583 that assigns legal entity for all commercial companies because necessity of mentioned sentence is that ownership of whole of company capital is in company jurisdiction

[1] Sotudeh Tehrani, H. (2009). Trade law volume 2. Dadgostar publication institute.

[2] Hassani, h. (2008). Commercial Law. Tehran: Mizan publication

and no one except company is not its owner[1]. Administration of justice in this regard says[2]: " for the reason of article 583 and 588 of commercial law, commercial companies has legal entity independent from partners entity and their assets is separate and independent from legal entity and any article of commercial law and regulations corresponding to companies registration such as article 211 and 215 (generally regulations of companies affairs settlements, article 202 and after 202) of trade law and article 208 and 213,217, 223, 224 and 225 of amendment of part of trade law affirm this issue." Therefore legislator in article 24 has total awareness and attention to three concept of stock and therefore it separated stock meaning from name of a part of company capital from stock as a representative and index of stockholder participation, commitment and profits and stock paper too. And it attributes participation, commitments and benefits to stockholder and stock is their index and representative. And stock as a name for a part of company capital, was not attributed to stockholder and doesn't belong to stockholder but belongs to company. In fact company has ownership actual right toward its capital and stock with discussed meaning is this right financial base.

2-2 Stock as stock paper

Sometimes it is deduced from stock word its apparent concept, and stock word is used as stock paper. Now this question occurs whether this stock is a property or not and if it is a property, which position it has in properties classification?

A- Paper Propertiness

Stock issuing in a specific way give it a special independence and commercial value. In this manner, with following trade law principles the right that attribute to the stock is unified with stock itself and stock ownership give rights to its owner that is attributed to the stock and stock finds financial aspect. As a result stock ownership right is no longer an intangible right but it is actual right that attribute to a certain property it means to stock. Therefore though stock is a right that stock holder has on a part of company capital, but this right is unified to document and stock in itself has special independence and value[3].

In respect of this opinion that creating stock paper the right is unified to a document called

[1] Tafreshi, M. Sokuti, R. (2004). Article of stock sale for joint stock companies. Journal of social and human sciences, 41, 50.

[2] Nissi, s.(2006). Advisory theories of administration of justice in civil problems. Tehran: Behnami publication.

[3] Sotudeh Tehrani, H. (2009). Trade law volume 2. Dadgostar publication institute.

stock and stock ownership practically change to a actual right on stock, some of lawyers[1] say: " this theory that accepted stock as a property and considered stockholder right on the stock as an actual right is justified, but for this regard that stock paper issuing is known as its actuality condition, it encounters problem. Because today in some countries law such as France stock issuing on paper is not necessary."

In our opinion this conclusion that appearance formality and uniformness of stock causes its owner right reflect in stock paper and grants it value and propertiness per se, does not seem correct because paper currency that is most complete document payable to the bearer and its writer compare it with stock paper does not have value and propertiness in itself , what have economic value is money not paper currency, as some experts[2] has alluded in this regard and believe:" paper currencies that are called negligently in informal language money are not really money, but are representative of some amount of money and credit value therefore when they are out of current has no trade value like a valueless piece of paper." Therefore what have economic value is stock in its essential meaning and stock paper that is stock representative ipso facto has no exchange value.

B- Distinction necessity between nameless and named

Among that group of lawyers that have known stock paper as property, some lawyers[3] have known nameless stocks as material property and nameless stock as immaterial property. For example some lawyers in determining legal essence of documents made distinction between named documents and nameless document and believe " contrary to nameless documents that debt in the document is embodied and considered as material properties, named documents are debts that their transferring take place by registering in offices committed company center (or legal entity) and therefore applicable law for them is indebted residence law (committed legal entity or company).

Some layers[4] without alluding to named stocks know nameless stock as material property that as if owner of paper is actual owner of right too and financial right became a part of document and is exchangeable as

[1] Bariklu, A. (2006). Stock essence and its repurchase by issuing firm. Journal of politic sciences and rights,1(1), 24-25.

[2] Shahidi, M. (2006).Fall of commitments. Tehran: Majd publication.

[3] Nassiri, M. (2009). Private international rights. Tehran: Agah publication.

[4] Katuzian, N. (2009). Primitive course of civil rights-ownership properties. Tehran: Mizan publication.

special commodity with other commodity and services.

"It seems that in determining legal essences of commercial companies stocks distinguishing between named stock and nameless stock is not true, though stock in this regard are origin of difference effect in possession and transferring methods and etc. But if according article 39 nameless stock considered as document payable to the bearer and as a result its owner can be recognized unless its contrary get proved. But according to article 40 of the same law about named stock mere possession is not sufficient for obtaining ownership and owner name must be registered in company stock registration office. But these differences cannot bring about paradox in legal essence of these two kind of stock. As in property distributing to movable and immovable it is origin of different effects but the essence doesn't separates these two from each other."[1]

C- Non-propertiness of stock paper

Some lawyers[2] know stock paper as not having propertiness and believe: "companies' stocks represent property too and themselves are not property though they are exchangeable. Because if we pay attention more closer we see there is a financial goal beyond this stock in other word outside of stock, company and capitals body and instead stockholders have undertaken commitments whereby benefits are divided between partners and stockholders. These activities are realities that stand behind company stocks backstage and because of these realities stocks are exchanged not because piece of papers called stock. Then companies stock is representative of property and it is not property itself."

It seems their purpose from stock that they didn't consider it as property is stock paper which in stock companies belongs to stockholder. Because they alluded twice in their analysis to term "piece of paper" and this term is not fitting with nothing except stock papers, because as we know in limited partnership companies no paper under title of stock or share is published[3].

Regardless that Langeroudi 's opinion is about stock paper, one of the lawyers[4] in criticizing him says: " some other authors overreached

[1] Sokuti Nasimi, R. (2002) investigation of legal essence- sentences and effects of stock trades of commercial companies (with comparative study in Iran and U.K law)(doctorate dissertation). Tarbiat modarres university.

[2] Langeroudi, M. (2001). Properties law. Tehran: Ganj Danesh Library.

[3] Sokuti Nasimi, R. (2002) investigation of legal essence- sentences and effects of stock trades of commercial companies (with comparative study in Iran and U.K law)(doctorate dissertation). Tarbiat modarres university.

[4] Hammiati vaghef, A. (2004). Civil Law(2) ownership properties, Tehran: Rokhsar publication

and say: " company stocks are not property, neither material nor spiritual." It must be asked if it is so, why companies stocks are being sold?"

It seems this criticism is not justified, because purpose of this remark that stock is not property, is toward its paper not stock as essence, so we conclude by what mentioned that stock paper is not known as property , but what has economic value and exchange possibility and considered as property is stock in essential meaning.

3-2- Stock as owner rights and commitments

What have economic value is stock as its essential meaning and about its legal essence and legal essence that stockholder has toward it different opinion have been expressed that is examined as follows:

A- Intangibility theory

Intangible right: right is a relation that a person has toward another person and creditor can only refer to indebted or obligor in order to obtain its own debt or obligation fulfillment. This right toward indebted person is enforceable and its matter can be demanded only from indebted, creditor just can enjoy this right by indebted obligation. For imagination of intangible right three element is necessary: firstly, creditor or right owner, secondly indebted that is obliged to fulfill obligation. Thirdly right or obligation matter. Contrary to actual right that its matter always is a material object, intangible right maybe correspond to fulfilling a task or refraining to do it and doesn't concern objects[1].

Now question is whether regarding this definition and structure and features that considered for intangible right can regard stockholder right toward stock in a commercial company as an intangible right.

In this theory after appearance of company legal entity, stockholders product is considered as company capital and totally belongs to company and stock owner with credit of being stockholder has no actual right toward company capital and just in proportion with stocks that belonged to it has a probable intangible right in connection with company annual profit receiving and also in time of company dissolving after paying debts and fulfilling obligations in proportion with its stock deserve receives a portion of company asset. Actual right of stockholder toward company benefits is different from a simple intangible right, for example owner of bonds is a mere creditor and except demanding loan amount and its profit has no other right in company and owner can regardless of profit or loss of company demands profit belonging

[1] Katuzian, N. (2009). Primitive course of civil rights-ownership properties. Tehran: Mizan publication.

to bonds and it can ask company warrantee its payment and in case of failure to pay the profit can oblige company to pay by means of court. But contrary to bonds, stockholder intangible right in connection with obtaining company annual profit is a probable and uncertain right and it's just when demandable that company has obtained profits and based upon company competent authorities the obtained profits are dividable, so if for any reason company has not obtained profits stockholder has no claim from company therefore it is obvious that stockholder claim from company about profits belonging to stock is probable claim and its achievement and payment has special conditions.

B- Peculiarity of stock right theory

In this theory the premise is that stockholder right on stock has not accordance with conventional actual and intangible right. And this right has particular essence that has similarity in some aspects with actual right and in other aspects with intangible right.

In current law, there are values that are recognized and are exchangeable with money but neither belong to person nor to object. For the same reason such right is not divided in the circle of actual or intangible right and itself brings about a peculiar group of new emerging properties[1].

Some lawyers[2] believe in this respect: partners right in commercial companies such as stock companies is a peculiar right, but contrary to above opinion, partners rights is not confined to demanding profit obtained in company survival time and possession of capital remnant in case of dissolution. Because stock owner has other right such as stock right to sell. Theory of peculiarity of right is that though since it doesn't consider stock as an intangible right and does not see stockholder as creditor of company, then has power and potency, because essence of everything is determined by common law and this theory in this regard is more according with understanding of common law about stock. But in this regard that does not clarify stock essence can be objected and contemplated. Finally what essence has this stock that every day is traded in market. And for the same reason this theory not only couldn't express stock essence but also has increased stock essence brevity[3].

[1] Katuzian, N. (2009). Primitive course of civil rights-ownership properties. Tehran: Mizan publication.

[2] Tafreshi, M.(2008). Analytical subjects in commercial companies rights (1). Tehran: Tarbiat Modares university publication.

[3] Bariklu, A. (2006). Stock essence and its repurchase by issuing firm. Journal of politic sciences and rights,1(1), 23

C- Actuality theory

"Actual right is a right that a person find directly toward something and can use it. Thus, in actual right there is only two elements: 1- The person who owns right (either natural or legal person) 2- The object that is matter of right.

Actual right is applied directly on its matter and it is not necessary to demand its fulfillment and take into account by other persons[1]". Actuality theory set forth stock right essence from two viewpoint. Firstly whether stockholder has actual right of ownership toward company capital or not? Secondly whether stock itself is independent property and stockholder has actual right of ownership. As it appears from writing way of article 24 what belongs to stockholder is stock in its essential meaning. It means stock is representative of participation, commitments and profits of its owner but for the reason of failure to separate this meaning and failure to distinguish what belongs to stock owner it appears that stockholder is owner of a part of company capital, for the same reason theory of actuality of stockholder toward company capital is set forth. This theory for a very sure reason is not acceptable. Because by emerging company legal entity whole of company capital merely belongs to company and stockholder in credit of being stockholder has no actual right toward company capital. For the same reason some lawyers[2] believe: "Partners has no actual right toward properties that constitute company asset and stock that is granted to each company a product is not representative of specific property of company properties, because product ownership is transferred to legal entities(commercial company) and after it only company has actual right toward products.".

3- Stock description in properties distribution

Property in regard of constituting elements can divide into two types. Material property that has external existence and occupies space and can be pointed out, has length, width and height such as that house, that car, this book. Immaterial property is a property that is not tangible and cannot be pointed out but it exists and is a credit matter. it means legislator has credited its existence and interpreted as spiritual or immaterial properties.

Therefore a property that inherently has value and propertiness is material property and immaterial property is a property whose value

[1] Katuzian, N. (2009). Primitive course of civil rights-ownership properties. Tehran: Mizan publication.

[2] Tafreshi, M.(2008). Analytical subjects in commercial companies rights (1). Tehran: Tarbiat Modares university publication.

is credit and inherently has no value and if credit giver withdraw its granted value and propertiness , it loses its value and falls from propertiness. As it can be considered though companies share and stock is property but they are second group property type. Because inherently has no value but credit giver has granted value and credit to them and must not imagine that stock is a claim. Because result of considering it as a claim is stockholder and partner are known as creditor of company and if partner sells its stock it means has sold his claim from company and this issue doesn't fit with legal principles and regulations. Because stockholder claim from company cannot be considered as a certain claim. Owing to the fact that as long as company isn't dissolved and its debts are not paid it is not clear that each stock is representative of how much company asset and maybe company is in a bad financial situation and not only nothing from company assets achieve to stockholders and partners, but also company remain still indebted. This situation in persons companies and general partnership company and joint stock with limited responsibility is worse, because in these companies in dissolution time, maybe nothing from company asset achieve to partners but for reason of indebtedness of company partners according to case must undertake jointly and severally or proportional with stock responsibility of payment of company debts. Besides supposing that stockholder claim is certain there is still problem because in replaced contract such as sale amount of each side must be determined and known but about stock even if claim is certain its amount and value is surely unknown and uncertain.

CONCLUSION

Stock in its essential meaning has economic value and in commercial common law is traded and though it has no tangible and external existence but since legislator doesn't used term "objet" in lexical meaning, it indicates that term "object" in addition to material properties encompasses immaterial properties too. Therefore everything that itself is traded can considered as "object".

As a result and regarding prevalent common law, stock is accepted as an actual property and stock owner has actual right of ownership toward it and can directly fulfill its own rights toward it. And though stock and share are in word different but from essential viewpoint and effect and privileges are the same. Partner in return for bringing share to a company can have rights, benefits and commitments that in Joint Stock Company it interpreted as stock and in limited partnership company is interpreted as share.

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[12] Sokuti Nasimi, R. (2002) investigation of legal essence-sentences and effects of stock trades of commercial companies (with comparative study in Iran and U.K law)(doctorate dissertation). Tarbiat Modarres University.

[13] Shahidi, M. (2006).Fall of commitments. Tehran: Majd publication.

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[16] Tafreshi, M. Sokuti, R. (2004). Article of stock sale for joint stock companies. Journal of social and human sciences, 41, 50.