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ASSESSING VOLUNTARY ASSIGNMENT OF RIGHT IN IRAN LAW

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ABSTRACT

In voluntary assignment of right, creditor may transfer his/her right to a third party, provided that the transfer would not be impossible due to legal prohibition, contractual agreement and natural rights. Through assigning rights, all relevant pledges would be also transferred following right. Some daily contracts, which individuals bind for life purposes, would cause some commitments for and against them. This would be discussed in details in commitments' discussion. On one hand, creating commitment should not be limited to contracts, but also it can be induced by quasi-contract, crime or tort or even induced by legal sentence. An overview on social issues indicates that to how extent right and religious have been considered in the society. It could be mentioned that people are living inside some fibers winded around them. In Iran law, there are different types of legal establishments, which would guarantee a kind of liabilityvoluntary assignment and have been considered in the study. It should be mentioned that, there are some topics, which are different from liabilityvoluntary assignment; although, they are physically similar to it. For example, one can refer to legal institution of voluntary assignment liability to credit and voluntary assignment of creditorand debtor (paragraph 2 and 3 of article 292 of civil code).

Keywords: Voluntary Assignment, Right, Iran Law

INTRODUCTION

Previous studies on liabilities indicated that previously relationship between creditors was an individual and personal relationship between parties. Roman people believed that parties can't be changed and the voluntary assignments should remain even after their death. From that time until now, due to changes and undeniable social and economic essences, after death of one party the voluntary assignment of liability would be transferred to one of his/her heirs. Accordingly, the present study has investigated voluntary assignment of right in Iran law, which is one of the main categories of liability rights. Before defining the topic, some terms and definitions should be considered such as liability and voluntary assignment [1].

Term "obligation" means being debtor. In legal term, it includes two infinitive and objective meanings. In infinitive definition, obligation means being responsible or irresponsible for an action against another person, whether in charge or not. For example, a person would be obligated against ownership of a factory and would instead install its machinery. A person, who is responsible for an action is debtor and a person, to whose benefit the voluntary

assignment would be formed, is creditor. For example, obligation has been applied in civil code article 221 as follows: in concept of objective noun it means a legal duty, which is legally in responsibilities of debtor. In this regard debtor would be forced to do it due to creditor's request and legal institutions. In this regard, obligation refers to a legal duty, which would be determined for individual due to his/her request or in force. For example, obligation in this concept has been presented in articles 222 and 226 of civil code [2].

French civil code has defined contract and obligation in article 1101; although, it has not defined it and has just considered its explanation and has also defined contract in article 183. Mentioned definition is almost like French code definition. Accordingly it should be mentioned that obligation is a legal relationship between two or more persons, through which one of them would be debtor and another person would be creditor for an action. The issue can be doing an action or leaving it. The definition has been confirmed by French lawmen and has been nearly taken of Roman definition of obligation; although, there are some problems with this definition. In mentioned definition, just negative aspect of the obligation has been considered;

although, legal relation between two persons would be an obligation, when one of them is debtor and another one is creditor. In addition, right and responsibility of creditor would not indicate obligation subject in details [3].

In article 1101 Of French civil code, different kinds of obligation subject have been presented as follows: obligation of foreign liability voluntary assignment (*obligation de donner*), obligation of leaving a certain action (*faire obligation de ne pas*) and obligation of performing an action (*obligation de faire*). Obligation may be none of the mentioned issues like dropping obligation, in which dropping of legal right would be considered. Here, legal right would be dropped through peace and this would be called peace at minimum. Legal relationship (obligation) may include transferring property or performing actions [4]. It should be noted that legal scholars consider legal duties as a category for obligation and believe that obligation includes liability and duty. They define it as follows: “any kind of limitation, which imposes legal rules to individuals’ freedom, and all negative and positive responsibilities of individuals would be considered as obligation.” Considering legal relationship in this regard, one can confirm the obligation; although, it should be mentioned that this

would not be in agreement with its technical concept. This is because of that, legal nature of obligation is debtor’s responsibility against creditor for performing or leaving an action, which is economically valuable. Obligation is based on common moral and legal thoughts, whereby people should observe some certain regulations in their behavior. Therefore, legal obligation is an order, which would be imposed by legal system and individuals should observe its materials. It could be mentioned that concept of obligation exceeds of limitations of obligation rights, because legal duty would not be always depended on obligation especially when government determines some regulations to provide public welfare e.g. military service, guardian duty for protecting person under guardianship; article 1235 of civil code [5].

Additionally, another example in this regard can be personal duties of couples, which would not consider obligation in certain meaning. Accordingly, against obligation, which is legally transferable and economically valuable, this kind of obligation is not transferable. In addition, a person, who doesn’t observe binding obligation, would be responsible for compensation; although, disobeying of mentioned duties would not result in such conclusion. For example, by

lack of compliance of wife, due to article 1108 of civil code, she would lose her right of gaining alimony [6].

Voluntary assignment means dispossession of an owner for against his/her property and giving it to another person, whether with owner's consent or legal order like selling property of hoarder in order of leader or in terms of law. This would be called in terms "voluntary assignment". Therefore, it could be mentioned that voluntary assignment can be divided to two categories as follows:

- A) Voluntary assignment of informed to transfer like selling
- B) Voluntary assignment of uninformed to transfer like transferring heritage to heirs of deceased. Usually, the first and the second one can be voluntary assignment. In other words, transfer in obligations refers to transferring and replacing in properties of debtor and creditor in form of voluntary or by force. The new party of contract would be a successor for deceased.

Sometimes in obligation rights, it could be mentioned that an obligation would be replaced by another one. This would confirm eliminating of first obligation and replacing it by the second one. Here, there would be two different obligations not a unit one.

Replacement of two different obligations would be interpreted as obligation transfer, which can't be discussed through the study. This should not be seemed as obligation voluntary assignment, in which only an obligation would be existed, along with its characteristics and just its debtor and creditor may be changed under certain situations. However, there would be some between them similarities at the first look. In obligation voluntary assignment in fact, one of the parties would be changed, not itself obligation, because if relationship between them changes, the obligation would be null and void. Thus, to imagine an obligation voluntary assignment, obligation should be remained unchanged, along with its original characteristics. Hence, talking of obligation voluntary assignment means whether its positive aspect (commitment) or negative aspect (liability). Therefore, transferring ability of each obligation would be discussed just in one aspect as follows: "transferring liability from an debtor to another debtor" or "transferring creditor's right to a third party" [7].

Roman law is one of the main resources of modern law in Europe and most of the regulations within civil codes of European countries would follow Roman law. Roman

law is common law language among lawmen in those countries, who has followed Roman law. Accordingly, history of this issue should be reviewed [8].

In Roman law, an original idea believed that obligation is depended on debtor and non-transferrable to another person. Also ancient communities considered obligation depended on debtor. This was because of that normally each debtor or creditor has personal characteristics like being persistent or active or being negligent, being accountable or non-accountable. These personalities can have an important role in obligation separately. Accordingly, in Roman law the obligation, whether positive or negative, would not be transferrable to third party and in this regard, voluntary assignment of obligation would be the only way to change debtor or creditor. If so, the original obligation would be dismissed and replaced with a new one with different characteristics and components, through which debtor or creditor has been changed.

Delegation for capture was another solution for changing creditor. Original creditor would ask for the new creditor to capture and this would allow new creditor to receive his/her right with no need to debtor's admission. This solution was not absolutely reliable, since

there was possibility of dismissing attorney before capturing right by original creditor [9]. Gradually, the idea became weak and obligation became an independent issue, so that it could be applied and confirmed by different countries like France. Although this was accepted by many countries, civil code of some countries, because of more importance of debtor comparing to creditor, avoided accepting obligation voluntary assignment without permission of creditor. French civil code has presented two approaches for changing debtor in obligations and including obligation voluntary assignment and representation in acting. Development of commercial relations and change in economic status caused development of some countries including Italy, Switzerland, and especially Germany. In German law, theory of giving financial value to obligation overcame theory of personal nature of obligation and as a result, obligation voluntary assignment was accepted in both positive and negative aspects. Most of the German legislators believe that, when it is possible to transfer obligation by creditor, there would be no problem for accepting voluntary assignment by debtor [10]. Thus, German legislators have identified voluntary assignment of right, along with voluntary assignment of

obligation, and regulated it. Now, most countries, following Roman-German law, have accepted obligation voluntary assignment beside right voluntary assignment [11].

Positive voluntary assignment of right in French followed only Roman law until 19th and used indirect solutions like delegation for capture; although, after appearing of basic changes in French law, especially about voluntary assignment of obligation (*la transmission des obligations*), a specific law establishment was made based on financial-economic concept. By that time, French obligations law was separated from Roman law completely. However, according to negative aspect of voluntary assignment, the country was maintaining its Roman traditions, so that obligation was considered only as a personal relation. Thus, contrary to liability, which would be transferred through indirect methods like stipulation in benefit of third party (*la stipulation pour autrui*), representation in delegating obligation (*la delegation debiteure*) or obligation transfer through changing debtor (*la novation par changement de*), or as a result of debtor's death (*par deces du debiteure*), obligation would be considered as a positive aspect of relationship.

Some traditional parts of English law, contrary to U.C.C about voluntary assignment of right, is obvious in this country until now. Finally, evolution of right voluntary assignment and other voluntary assignments caused approval of current status in Law System of England [12].

Main body

About voluntary assignment of right, it should be mentioned that different motivations and desires can affect it. Today, main part of individuals' properties is their receivable rights and legal institution of voluntary assignment of right can become more important over the time in commercial law and transactions, since it can facilitate their economic relations. Sometimes assigner tends to transfer his/her right to new creditor; hence, can receive a certain price and instead become responsible for seller duties. It should be mentioned that, this would happen when creditor needs rapid access to his/her right because of financial problems. In this regard, the creditor would receive some money and sometimes makes another person his/her attorney because of difficulties in this way.

The clearest case of accepting voluntary assignment of right in Iran can be legal bill of voluntary assignment of commercial papers approved on Nov 1982 in Financial

Commission of central bank of Islamic Republic of Iran. A similar organization is existed in the France through which: “banks can distribute some commercial documents according to law, to provide required facilities for commercial and production units. Banks can pay less than costs of promissory and bills, which indicates amount of debt.”

There is no doubt that in every research, at the first some questions would be provided and make researcher to challenge to find their answers. Accordingly, question of the present study has been presented here as follows:

Here the question is about legal nature and concept of voluntary assignment of right or obligation. Since voluntary assignment of obligation is basically based on accepting separation of obligation from personality of its parties and these are acceptable in some contracts such as obligation and transfer, is there any need to assess legal institution of voluntary assignment of right separately due to article 10 of civil code, along with other legal organizations? On the other hand, what differences and similarities would be existed among accepted organizations in Iran such as institution of voluntary assignment of law and other accepted organizations in civil code such as voluntary assignment of obligation contract, transfer contract, etc, which can be

investigated as an original organization, along with other legal departments?

In addition, the research includes some assumptions, which would be mentioned here. The assumption is that, due to accepting basis of voluntary assignment of obligations and possibility of separation of obligation from parties' personalities in Iran law, legal organization of voluntary assignment of right is based on its voluntary voluntary assignment. Some characteristics cause assessment of this institution separated from some contracts such as obligation and transfer contracts. Also according to nature of this legal organization, which is based on voluntary assignment of right from a person to another person, all guarantees of obligation should be also transferred; although, it would be possible to mention some extra conditions [13].

METHODOLOGY

Applied method in the present study, like other researches of human sciences, is library method. In this regard, the study has tried to consider obligations law of other countries such as France, Egypt, England, etc. according to accepting legal organization of voluntary assignment of obligation in Egypt Civil Code, valuable book of Dr.Sanhoori under the title of “*Al-Vasit*” Has been

applied. In French law, the study has tried to use scientific discussions of some books such as *Carbonie*, *Mazoha*, *Planiol*, etc [14].

Theories of *Imami* and public jurists have been also considered where was necessary. In this regard, some books have been applied such as “*SharheLamhe*”, “*Jme-al-Maghased*”, “*Al-Maghni*” and “*Javaheer*”. Finally due to separation of positive and negative aspects, voluntary assignment of obligation and relevant issues has been investigated in this study. Nature of voluntary assignment of right has been investigated, along with a comparative overview on evolution of current status of obligation voluntary assignment.

DISCUSSION AND RESULTS

The term “voluntary assignment” is not a separated concept from its literal meaning and accordingly, it means same replacement in law. Literal meaning of voluntary assignment, which is sometimes a synonym for transfer, would mean replacement and changing location by whether by itself or along with transfer. However, some legal interpretations have limited applications, so that due to replacement of a dept with another one, andebtor would be changed into another one. Same asvoluntary assignment of obligation and its relevant contracts like obligation and transfer or more generally to describe

transmission of property ownership, a right of obligation should be also applied. For example ownership of seller and price, which has an external subject. Change in property ownership can be a kind of this voluntary assignment, with the difference that ownership voluntary assignment would be induced by contract and is based on satisfaction of ownership, otherwise, it would be considered as forcible voluntary assignment [15].

In Persian language, right means seeking, request and application; although, there is some ability in law science, which every country gives individuals in certain circumstances, so that they can demand for their rights, perform an action or avoid something. Accordingly, right in words means request, and since it has been presented to individuals as dominance, it can be mentioned as right. Since it includes ability of trading, it would be considered as intangible property; although including financial and economic aspect, it can be presented as financial law comparing to those laws, which are not evaluable directly.

Since the mentioned right would be in obligations of third party, it would be named as obligatory right and since any obligatory property would be considered as liability,

would be named liability right. Finally since law has admitted ability of imposing such right to creditors, it would be named personal right, so that the creditor can give back the liability of debtor [16].

However, right would be positive aspect of obligation, since it is a legal relation, which connects creditor to debtor. On the contrary, liability is negative aspect of the mentioned relationship. In other words, regardless that it can create contract, quasi-contract, quasi-crime or law, right and liability are existed in obligation. Finally, request is a kind of right, which creditor can ask debtor to perform it; although, obligation is a duty, which debtor should perform it, otherwise, law would help creditor to force debtor to settle the liability. Legal nature of voluntary assignment of right would be preferable comparing to forcible and unintentional voluntary assignment of right. Forcible voluntary assignment is in the limitation of legal happen "death", which is out discussion of the study [17].

Clearly, voluntary assignment of right is a legal action, which needs intention of two parties. The party, who transfers his/her right to third party would be original creditor; although, the third party, who would be obligatory owner of debtor, would be new creditor.

During the legal process, voluntary assignment parties with common intention, tend to write a certain legal document, which is same voluntary assignment of right possession. Agreement of two different intentions about a unit legal document, due to article 191 of civil code, would be named contract. Accordingly, voluntary assignment of right would be considered as a contract, with no need to getting permission of debtor; whether the original creditor receives charge or not. Finally, since law has admitted individuals to form different legal cases and since right can be a case of property, it can be transferred in form of various legal forms. Hence, its voluntary assignment can be subject of various contracts, so that voluntary assignment of right would be appeared sometimes in form of an unnamed contract. Sometimes I would be considered as other ways, especially transferring of right's reagent documents and so on. Accordingly, although in all mentioned cases writing a legal contract would be considered as agreement, some problems may appear from two aspects as follows [18]:

One aspect is nature of right voluntary assignment and transferring its guarantee documents and another is moral aspect, which has been existed among lawmen. From

previous times, some French lawmen like *Puttie* and *Doma* have considered contract as an agreement, which would cause obligation not voluntary assignment. Accordingly, although two concepts “agreement” and “compromise” are not different in their components, since sometimes obligation would be transferred and sometimes it would be created, the first one is agreement and the second one is contract. However, the differences in French law, due to unity of contract and agreement, using two mentioned terms in civil code of the country was denied, so that some French authors proposed that in addition to using these terms as synonyms, one can define contract as follows: “it is an agreement, which creates right” [19].

In Iranian civil code; although civil code, due to French civil code, can create obligation, since Islamic law doesn't limit contract to creating obligation, mentioned problems can be solved. Therefore, to solve the problem an obligation should be created and implemented. Thus, the agreement can be named as contract for various reasons.

The most important issue in this regard is related to voluntary assignment of debt right to third party and withdrawal of a property from a person responsibility and entering to another person's responsibility. Realization of

this goal can be provided through different methods. Voluntary assignment of right and ownership of a property would be considered as a selling contract and would include effects of selling; although, it includes also specific effects of voluntary assignment of right [20].

Creditor may transfer a right to debtor or a third party or transfer her/his property in benefit of third party. Therefore, voluntary assignment of right with maintaining its features would be naturally a case of specified contracts. In law system of different countries, related issues to specified contracts have been discussed in details; although the most important issue is that there are different titles for the right but today voluntary assignment of right would be considered as transferring reagent documents in form of an unnamed contract [21].

Basically in most cases, assignee and assigner of right would request for an agreement to escape from limitations of contract, without choosing a title for voluntary assignment contract. In this case, request of creditor from debtor would be just transferred to third party through a personal contract. This kind of contract is unspecified contract and would be formed between owner and assignee. Due to article 10 and 223 of civil code, it can be legal provided that it observes

all legal limitations and aspects. Legislators of some countries have accepted voluntary assignment of right as a specified contract after passing some challenges and problems and they have approved some rules related to this issue.

Reference documents of right are some documents, which indicate commitment of signatory or signatories and settling liability. Since commitment is positive aspect of the obligation, request or right can be considered as performing an action or avoiding it or voluntary assignment of a property. Contents of a document would in fact include mentioned issues. Accordingly, the documents in general would be named as positive documents of liability, since they have positive aspect related to the obligation. Accordingly, it doesn't mean that all reference documents are proving and positive documents or are transferable to third party. Voluntary assignment capability is related to some parts of reference documents, which are known as transferable documents. Such documents in commercial law have subjective aspect and would be set for the certain good in them. It means that, they are not only positive documents, but also they can't be cancelled. Clearest sample for these documents is commercial document, which

can be easily transferred and formalities of civil code would not be observed in them [22].

In *Imami* and *tetrad religions* jurisprudence and Iran's civil code, which have indicated their resistance in many aspects of juristic basis, possibility of transferring of obligation and imagination for separation of liability from debtor have been discussed in early times. Such claim can lead to accepting some valuable legal establishments like obligation contract and transfer contract due to Islamic and Iranian juristic characteristics. Regardless mentioned issues, each of them indicate that imagination of voluntary assignment of liability and right has been appeared at early times of Islam appearance and then has been developed during an evolutionary process. Although thought of voluntary assignment of right has been presented in various methods and contrary to conflicts about accepting or rejecting it in form of selling, Imami jurists and Traditional jurists have some arguments on this issue. In Islamic law, this issue would be presented through some terms including selling liability, donation of liability, transferring debtor's obligated right. Some viewpoints of *Imami* and *tetrad religions* jurisprudence would be explained as follows:

Tripled religions should apply some indirect methods such as delegation for capturing right, to transfer right and request. Although they have accepted voluntary assignment of right to some extent in form of transfer contract, which here would not be considered, since they are not related to the present study. Evolution and current status of right voluntary assignment in Iran law should be proved using different and outspread articles. Until 1934, in which legislator has discussed clearly about voluntary assignment of right through adding an article to approved law, except for civil code and commercial code, through which one can receive admission of transferring right implicitly. It should be mentioned that, this article (38 *Aasar code*), clearly explains voluntary assignment of right from creditor to third party. Additionally, some legal authors have mentioned another reference for voluntary assignment of right including article 26 of insurance code approved in 1937. The article states that: “in the credit period of contract of life insurance, insurer has right to transfer certain cost in insurance to another person. Mentioned transfer should be signed by assigner and insurer.” Insurer is third party for this voluntary assignment and his/her consent is necessary, otherwise, the contract would be

null and void. About voluntary assignment of right in commercial code it should be mentioned that, since the issue would involve endorsing and transferring commercial documents, they have been considered; although, about civil code, the most known article is article 292 whereby in paragraph 3 creditor can transfer right to another person. Although from this article it is clear that creditor can assign the right to third party, the main problem by this article is that its provisions are depended on main article. Accordingly, the one and only article in Iranian civil code, which has discussed voluntary assignment of right, has been integrated with a different legal nature. In this regard to prove voluntary assignment of right, one should either apply for modification of the rule or should leave its surface and consider voluntary assignment of law as transferring obligation through changing creditor. However, here the study won't focus on this issue and goes through other issues about voluntary assignment of right in Iranian civil code. Some lawmen in Iranian civil code believe that the clearest sample of right voluntary assignment in form of specified contracts can be selling contact.

Another specified contract, which discusses about voluntary assignment of right, is

donation contract. About the mentioned contract, Iranian civil code article 806, considers donating right to debtor as a contract, regardless conflicts in this regard. Mentioned article states: “whenever creditor donates the right to debtor, he/she can’t return again”. Therefore, if creditor donates her/his right to debtor, it would be a donation contract and would be true if creditor accepts it. Donating liability to debtor doesn’t need to capture donation case, because in this case capturing is in credit and since a liability is obligated, there would be no need to capturing. Clearly, the study discussed about donation of right to debtor, which can be implemented due to article 801 of civil code and isn’t returnable. Although about donation of right to a third party, since Iranian civil codes considers capturing as validity for donation, creditor can’t transfer his/her right to debtor under the title of donation, because one can’t transfer right (request) to another person. Therefore in Iranian law, voluntary assignment of right would be considered as donation, when right is transferred to debtor. Irrevocable voluntary assignment of right to a third party should be investigated in other law cases such as personal contracts. In Imami jurisprudence, in addition to donation, another contract for capturing right

is loan contract. As it was mentioned before, right would not include capability of capturing and donation would be a temporary contract not absolute contract. Thus, *Imami* jurists have rejected right capturing; although, authors of civil code have not considered necessity of capturing in definition of capturing. They believe that since contracts should be foster, hence loan contract should be considered a kind of foster contracts. On the other hand, due to article 648 of civil code, loan is a contract, in which one of parties would transfer his/her right to another party. It seems that Iranian civil code formally has accepted loan contract as a formal contract, because mentioned article discusses about transferring property through loan contract. In this regard, some Iranian scholars of civil code have confirmed capability of right voluntary assignment according to article 10 of civil code. They have considered this contract as an independent contract, which is subjective for parties and legal representative. Meanwhile it should be mentioned that, unchanged nature of article 648 would also confirm this issue. Hence due to essential integration of all law with Islam according to fourth principle of constitution, amendment of mentioned article would be

necessary, provided that status of loaning would be clear in it.

Effects of voluntary assignment of right

As it was mentioned, contract between creditor and third party would cause assigning right to him/her. Here, awareness or unawareness of debtor and consent or lack of consent of debtor would not affect voluntary assignment. After realization of contract, assignee would be considered as new owner for the obligated property, whether in charge or free of charge.

Voluntary assignment of right can create specific relations among original creditor, new creditor, main debtor and third partys. Each of these individuals would be affected by this process in specific form.

Relationship between original creditor and new creditor

Through realizing voluntary assignment contract, the right would be transferred from properties of original creditor and then would be entered to properties of new creditor. The main subjects in the study can be divided to two categories including voluntary assignment of right, along with all characteristics, guarantees, references, attachments, defenses and other commitments and responsibilities of original creditor against new creditor.

Voluntary assignment of right, along with its characteristics, references and defenses

Through realizing voluntary assignment contract even before its influence in rights of debtor and third partys, the right would be transferred to new creditor and after influencing of voluntary assignment in right of debtor, the right should be paid to new creditor. Since the same right would be transferred, all characteristics, guarantees, references, attachments, defenses should be also assigned.

For example, if commercial right is according to an official document, right therefore should be transferred with all its attachments and debtor can present his/her defenses against new creditor. If debtor settles the right before influencing in his/her rights, this would be his/her fairness and here original creditor would be a reference for new creditor. In addition, if the right is null and void through set-off of assigner's debt or discharging of original assigner, as a result this would affect new creditor. Through getting null and void of voluntary assignment because of lack of subject, no score would be considered for assignee (new creditor).

The most important consequence of voluntary assignment of right is that, assigner should submit documents of right and proving

evidences to new creditor. In other words, since document is an instrument for request for right, voluntary assignment of right refers to transferring document of right. This would not face any problem, unless being a changeable contract; although, since original creditor transfers just a part of right to new creditor, submitting document would face some problems. For example, document of right should be submitted to both original and new creditors and both of them can request for their right in same time, which can create some difficulties. The best solution is that, original document should be changed into two separated documents, each including just right of the owner. In other words, in each document, right of original creditor and new creditor should be mentioned separately, so that they would be able to appeal the right, whenever they want.

Problems with voluntary assignment of right

Problems with voluntary assignment of right would be related basically to way of contracting between original and new creditors and its provisions. If the mentioned contract is null and void legally for example because of incapacity of new creditor, every interested party, especially debtor, can discharge the contract against new creditor. If

canceling right is predicted for original creditor in voluntary assignment contract and since inserting authority would not damage relationship between creditor and debtor and also debtor is responsible for liability, the debtor therefore can't avoid his/her commitment according to this right.

CONCLUSION

Obligation would be considered as right in positive aspect and as liability in negative aspect. Voluntary assignment of obligation includes voluntary assignment of right and voluntary assignment of liability. Voluntary assignment of obligation is a legal establishment based on possibility of separating obligation of parties' characters. It could be mentioned that, the main issue is ability of obligations for voluntary assignment, unless, an obligation is not transferable due to its nature or parties' agreement.

Through development of concept "property", liability right has been also developed and gradually, positive aspect of obligation has been considered as a component of creditor's property and a negative amount of debtor's property. It means that, only physical and financial aspect of property would not be considered, but also societies can consider creditor as a temporary owner for debtor's

property. Although this would be different from individuals' ownership on things, because contrary, it is on one hand against individuals and on the other hand, it is not tangible. However, gradually societies could accept temporary voluntary assignment of rights and properties and assume obligatory right as an economic value, separated from characters of creditor and debtor. Development of such thought has caused removal of this dependence, except for some issues, in which obligation is completely depended on one party. Necessity of being adjusted with such developments has forced legislators to review and approve required regulations of society to implement liability issue. Since early 20th, a modern establishment was appeared in some countries under the title of "voluntary assignment of right". The term has gained a special position in current legal system, especially in commercial law.

In Iran law, basis of voluntary assignment of right has been accepted in form of some contracts like obligation contract and transfer contract. Independent organization "voluntary assignment of right", naturally includes some characteristics, which distinguishes it from other legal establishments. Contrary to physical similarities of paragraphs 2 and 3 of

article 292 of Iranian civil code, they have presented different issues for obligation of transferring creditor and debtor. In voluntary assignment of obligation, original obligation would be eliminated and a new obligation would be replaced. According to article 293, its guarantees should be also discharged. In voluntary assignment of right, not only obligation would not be discharged, but also all attachments would be transferred following the obligation.

In voluntary assignment of right, along with agreement of parties, the original right would be transferred to assignee, along with its all attachments, features and problems. Here, there would be no need to permission of debtor. In voluntary assignment of liability, while a contract is forming between original and new debtors, interference of creditor would be required; although, when a contract is forming between new creditor and debtor, it seems that consent of original creditor is not for sure necessary. Voluntary assignment of right would be influencing in rights of debtor, when he/she be informed of voluntary assignment or be aware by himself/herself.

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