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NATURE OF EFFECTS OF WILL ON LEGAL ACTIONS AND EVENTS

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ABSTRACT

Today, the principle of will has passed traditional border of conventional obligations which was the only place to respect will of the people, and establishes itself in format of subjects of nonconventional commitments with the source of law. According to the title of the current research, the library- documental method is selected so that required data are collected using related books and documents. The descriptive-analytical method is also used in this research. To be more precise, first the data are collected by receipts, and then they will be analyzed.

Keywords: Will, Legal Acts, Legal Events, Conventional Commitments

INTRODUCTION

Purpose of legal actions is events created by will of people, its legal effects are also subordinate of this will; therefore, it can be said that legal act is an action someone do willingly with the intention of obtaining legal effect; for example, a person does the act of selling with purpose of creating contract of sale. On the other hand, there are some events that are not caused by will of people, rather they happen by law; these voluntary(e.g. grabbing) or natural(e.g. birth and death of people) legal events are called legal incidents. The effect of legal acts is for oneself and his/her opponent both; in other words, result of a legal act includes commitment in favor of one party and against the other party, and purpose of commitment is legal status of a person responsible for the action. To realize the commitment, some items are necessary:

A) Subject of commitment: it means the affair that someone commits against

someone else. Subject of commitment might be one of the following items:

1. Property transition, such as selling house to others
2. Doing work, for example a contractor commits to build a building within the specified period.
3. Refusal of doing work, such as commitment of owner against renter for not specifying the adjacent store to a specific business.

B) Parties of commitment: the person who takes responsibility of commitment and the person who the commitment is in his/her favor are called promisor (debtor) and promisee (creditor), respectively; because commitment is a relationship between two or more actual/legal persons.

C) Legal relationship: purpose of this relation is the dominance that promisee finds on properties of promisor, whereby he/she can provide means of implementing commitment by using the assets.

For more explanation of legal act, it is necessary to describe types of legal act based on will; legal acts are divided into two categories, sometimes a will alone is enough for creation of a legal act with the need for agreement; this type of legal acts are called 'unilateral obligations'. On the other hand, there are some other acts that a will alone is not enough for creating them and they need agreement of two or more wills; this agreement of wills is called 'contract'. Therefore, contract includes mutual cooperation of two or more wills in creating a legal nature. For example, buying and selling things occurs by the agreement of seller and buyer wills and will of each of them is not enough alone.

The other issue discussed in this research is legal events that their effect is involuntary. Sometimes occurrence of legal events is legal but its effect is illegal, such as wrath of God; also sometimes the occurrence and effect of legal events are involuntary both, such as death. Transition of assets to heirs after death is involuntary. Therefore, the events such as transition of assets to heirs are legal that their occurrence and effects are involuntary both. So legal events are those with involuntary effects. In this research, thus we consider 'nature of effects of will on legal actions and events'.

Historical background of will

In all legal systems, will is accepted as the main essence of creating unilateral and mutual legal acts. We can check the effects and signs of extremes towards impact and influence of will in legal relations during history distinctively. In an overall view, the significance of willpower refers to age of

Renaissance in Europe, when liberalism empowered as a philosophical school. Liberalism combines two important elements, ea. originality of will and originality of mind and by putting these two concepts concludes that humans are wise and thoughtful beings with authority and will that have full ability of recognizing their interests and benefits, and also they have the power to move towards providing their welfare. The consequence of this combination is a legal liberalism that itself is one of the fundamentals of 'principle of willpower'. Despite this, the willpower has lasted not so long and gradually some important limitations surrounded it; so that in the modern age, the principle of willpower has more theoretical results and its limited type is observed in framework of principle of conventional freedom in laws of different countries.

In Imami jurisprudence , willpower has a high position to the extent that legal act will never be realized without people's will; in world of law also will is defined as movement of human's soul towards a certain act after the imagination and confirmation of enthusiasm to it. Law of Iran refers to high position of will, besides under influence of imami jurisprudence, it divides will into two levels of satisfaction and purpose. In contrast, there is no distinction observed between satisfaction and purpose in law of France; so that it is the first and most important element of contract according to article 1108 of France civil law. Satisfaction of legal acts poses as a strong principle due to having very strong religious, technical and political roots. Law of Iran supports principle of will dominance, ethical and economic value, legal liberalism, and religious roots such as verses, narratives and juridical principles.

The conflict of will principle and rule of solving conflict of laws

When it is accepted that contract is created by will of parties, then it doesn't matter to be national or international .therefore, parties of a domestic contract must be able to make a contract and determine its conditions all that they want. It doesn't matter that the rules are inspired by law of a foreign country or made by parties themselves. There are people who are disagree with determining dominant law for domestic contract; they believe that rule of solving conflict of laws must be applied in conflict of rules, while the domestic contract is not in situation of conflict of rules.

The principle of will domination is not related to conflict of rules; the principle itself orders that parties can determine the condition of contract, whether this is a domestic contract or international one. Legislators had looked to issue of dominant law from conflict of laws

perspective; it means that they had proposed the issue of dominant law from conflict of rules viewpoint and to solve the conflict between rules.

Although the lawyers and famous legal systems know the principle of will domination as rule of international contracts, but the most common rule of Iran's law, ea. article 968 of civil law which is the basic for determining rule of contracts and lasted more than 77 years- knows commitments caused by contracts as subordinate of rule of contract ; this divides professors of law to three groups: first, the group that had not accept the place of occurring contract base on research on private international law. Second, the group that apparently had no challenge with article 968 and accept the judicial legislation and finally the group that highly had accepted the rule of legislator. None of the items proposed as parameters of determining the dominant law is not able of resistance against the rule compromised by parties, because this rule in fact is not an option among the potions above but it is the correct criteria and referral point of view. It is because that now all famous legal systems have no doubt that the principle of willpower is the sole rule of contracts. Generally, the reliability of willpower is due to reliability of agreement rather than permit of legislator. The legislator must validate governance of will, because reliability of will originates from essence and nature of agreement.

As mentioned before, the principle of willpower does not differentiate between domestic and nondomestic contract,. Therefore, parties of a domestic contract must be able to make it and determine its conditions the way they like.

Principle of willpower in legal acts

Today, principle of willpower is one of the main principles in the private international law that is accepted in domestic law of countries and also international contracts (in the field of contracts and nonconventional commitments) both. Simply said this principle means that parties are allowed to choose the rule applicable on their legal relationship (including conventional or nonconventional) freely.

Most of people have introduced Dumoulin, French famous jurist as founder of willpower. But some others belie that he had no attention to real and mental purpose of minds as Huber, the Dutch jurist had. In any case, Mancin (Italian jurist) definitely is who proposed principle of willpower in the meaning of mental and explicit option of parties. The mentioned theory entered Italian civil law in 1865.

The concept of willpower was developed from the second half of twentieth century onwards; so that it acceded in most national and international legal systems and also it extended to other legal fields, ranging from closing court to civil liability and inheritance caused by marital relationship.

Nowadays in international level, the willpower gains such importance that some remind it as an international parameter that can dominate on private international law of the countries incompatible with this principle. From legal viewpoint, those principles also necessitates the need for rules of conflict solution that realizes confidence, predictability and homogenization of results that parties never imagined; on the other hand, the willpower can realize all these goals well due to opinion of some who believe that private international law is more in favor of interests of individuals rather than government.

The basic of any contract including agreement is will of those who signed it.in other words, will is the most important and/or only factor of making contract. In this way, individuals who have correct and proper will all can agree about their debts and commitments the way they want if they exit not from the framework of law.

At the beginning of judicial life, the contracts were subject to certain formalities between ancient peoples, and specific words, tools and equipment were used for contracts; without those formalities, there was no contract made and as a result the effects under agreement of parties were not established. But the freedom of will principle gradually found a specific situation in contracts and therefore formalities were reduced.

Contract, agreement or transaction is a kind of social voluntary action that meets the material or spiritual need mutually. Voluntary description indicates main component of contact, ea. human's will and social adjective shows necessity of law for realization and validation of contract; the result of this description is willpower of contract in framework of law. The willpower in contracts and generally in legal acts is a accepted principle except in case of conflict with society system and its guard, ea. the law. This principle is necessity of munificence and freedom the t God gives humans. The principle of willpower in legal acts leads to freedom of individuals' in dictating legal act and choice for having unilateral obligations or not, selecting type of contracts the contract party and unilateral obligations,

Determining the range of its impacts and the provisions of the contract, and also making contracts in allowed cases.

The principle of willpower is accepted by statutory law of Iran and states the principles below:

1. Will alone is sufficient for making contract and establishing requirements and obligations.
2. Will is free from determining effects, conditions, type of contract, and even guarantee of violating its conditions. Therefore, the principle implies that satisfaction of creators of legal acts is alone enough for making requirement.

Range of principle of willpower

In contrast to what advocates of willpower principle had perceived, prevention of government's interventions in relationships of people and assigning all exchanges to innovation and will of individuals could not guarantee freedom and equality for parties of a contract, and thus in most cases the injustice was dominant, because the society somehow defends itself against collusion of individuals and also it is also protector of people against jobbery of rich people.

Besides mentioned necessities, conventional system also has undeniable benefits so that no system is not under absolute authority of government. In addition, it is observed in the process of freedom of will that sometimes barriers of willpower are developed and concepts of public order and good behavior are used for meditating the conventional law and thereby, harmful contracts are reduced; but since principle of willpower was still dominant, it could not replace justice and goodwill by will of people.

As article 10 of civil law states, the only factor that limits conventional freedom is provision of 'explicit opposition to the law'. But a question arises that whether this provision is enough alone?

It must be said in answer that mentioned provision has the limitation to consider the contracts contrary to the soul and implicit provisions of legislator as permissible ones and also it challenges the judge when facing with antisocial contracts. Besides written and compiled rules of every country, there are some rules that must be explored by jurist and legal process, the rules that their basis is just public interests and supporting moral spirituality in business.

In article 960 of civil law, goodwill is mentioned as one of these rules. Article 6 of civil procedure code also perceives the contract intruder of public order and against goodwill without significant effect in the court. Article 167 of Islamic law states another basis to limit conventional freedom,

because in cases that judge can't find ruling of subject in the law, he must sentence due to Islamic laws.

The principle of will power/independency of contracts does not mean that there must not be any limitation for people's will in adjustment and ratification of contract. Most of jurists believe that absolute individual freedoms have no meaning in societies; the same applies for contracts and legislators of each country draw a certain limit for people of society to be free in their personal relations. In fact, it is clear that parties of contract can arrange desired contract the way they want; it is sometimes extensive, and sometimes reduced due to specific policy ruling on people, society and type of government. But the infinite freedom is never imaginable since it leads to a disordered society.

Results of principle of willpower

Important results of principle of willpower are summarized below:

1. Contracts forms main source of commitments and vice versa; other nonconventional sources are few and exceptional. When we look to civil law briefly, we will see that most of legal articles are about contracts that cause commitments by will of contractors. And nonconventional commitments exist just in the field of civil liability.
2. Large amount of legal articles in the field of contracts are supplementary or interpretive. In these articles, contract is prior to law. Main goal of law is to complete and interpret saying of two sides of the contract. Thus, law is not imperative but it is supplementary except in cases that public order is emphasized.
3. Will of human has a basic role in making contract. Individuals are free to sign a contract or not; it is not possible to force someone for making contract. In addition, people can determine content and effects of contract by their will. In legal terms, this freedom is called ' conventional freedom' or 'freedom of contracts; and it is often known as main part of principle of willpower. According to this freedom, individuals can adjust their conventional relations the way they want, and they are not forced to use samples that law has provided for them.
4. Will of contractors must be respected after signing a contract, and public authorities have no right to change its effects. The judge cannot revise the contract; legislator also must respect to will of both parties of contract as much as possible. Only parties of the contract can change its effects by mutual agreement. And this is itself a new

contract that is signed based on principle of willpower.

5. In terms of formation, contracts follows no specific formalities, and will itself is enough for signing contract. Today, commitments caused by consensual (consent) are much more than oral or deed ones. Using term or writing (common or formal document) is not required basically, expect in exceptional cases.
6. In interpretation of contract, the principle of willpower attends to what both parties want. Terms of contract valid to the extent that determine real and inner will of parties of contract. So their real will must be valid and reason of contract interpretation.

To distinguish the extent and domain of commitment, the judge first must investigate about real will of promisor. Whenever he is not able to achieve it by certainty, then he must determine the inner will by suspicion and estimation; because it is just human's will that is placed as origin of all commitments if it is emerged from free man and not contaminated to fault.

7. The rights and commitments of individuals towards each other is caused by their will. In legal acts, will impacts explicitly and decisive and the law also respects to will of the parties. In addition, guarantee of individuals in legal events is not caused by law imposed on them. Here human's will again acts as indirect basis of commitment. For this reason, the relation of nonconventional commitments will never be cut with free will. As the responsibility caused by crime and tort is limited to the case that illegal act is done by purpose or loss is made by fault of promisor.
8. Voluntary acts are always fair, and no promisor can claim that is forced for an action against justice; because what emerged is his desire.

Public effects of will in legal acts and events

According to implicit nature and essence of will and the tools used for this reason, we can express the mutual relation of two types of will in the below:

The concept of consent in legal acts of Iran's law is that legal act is signed just by satisfaction of parties and without need for other formalities, and main part of contract (ea. will) needs not to any specific form or formality. Although it is required to determine will in forming any consent legal act; but since the principle of consent knows annunciation of will enough to sign a contract, it certainly has harmony with annunciation of implicit will and there is no

conflict observed between these two types of will.

It is notable that principle of consent with quite moderate approach never recommends using specific tools of will; it perceives not type and form of tool important but its considered result is annunciation of will, so that the audience would be able to understand purpose of annunciator. Certainly, this viewpoint moderation and harmony with implicit announcement of will, so that we can say the extent of consent principle of legal acts will provide the possibility of further use of implicit will declaration.

Now, we consider legal acts from formality point of view. In a formality legal act that signing the contract requires specific formality such as writing, documents arrangement, using specific terms and.. . Certainly, indication of implicit will has not any application or impact, since using formality by no means is not compatible and retractable with implicitly of will indication; the issue that its reverse is also true. For example, if we assume sale of recorded property as a formal legal act that needs certificate of transition, we certainly must use explicit means of will indication together with arrangement and supervision of a liable official agent.

- Legal acts are those legal phenomena created by individuals' will that their legal effects also are subordinate of the same will. Legal events are another category of legal phenomena that their legal effects are not result of individual will; but they occur by rule of law such birth or death. Sometimes the boundary between these two(legal acts and events) is not recognized well, as a result the fault occurs in identification of legal natures; so that some legal events are introduced as legal acts, and rule of legal issues is not determined correctly due to significant difference between these two.
- Legal act is created without the need of material tools to the need, and it is not possible to predict imagination; since will is of the type of physical science and needs not to logic. The opposite point of legal act is legal event; any event that has legal effects whether voluntary or involuntary is legal event. Legal event is a physical incident that might emerge with human's will or not. For example a who person breaks someone else dish when asleep, although he was asleep but he is responsible against owner of dish. Birth and death are also legal events that have legal effects.

CONCLUSIONS

- Will is the most important and/or only factors to sign a contract. It is sum of purpose and satisfaction. What is important in purpose is that it must be of the type construct. In addition, based on article 191 of Iran civil law purpose of construct must be coupled by the detector; therefore, will emerges in two inner and apparent types. According to article 191 and 196 of civil law and in case of conflict between these two types, the contract will be subordinate of real (inner) will of parties.

In Imami jurisprudence, will has a high position to the extent that legal act will never recognize without individuals' will and use of terms and conditions is not helpful for any legal act without serious will; will consists of two satisfaction and purpose levels:

1. Will alone is sufficient for making contract and establishing requirements and obligations.
2. Will is free from determining effects, conditions, type of contract, and even guarantee of violating its conditions.

Generally, it can be said that as original contract is made by will of parties, the same applies for its content. Basically, the ratification, execution and conclusion of contract depend on will of parties.

- In the end, it must be mentioned that impact of will is minimal and generally ineffective in public law. The public interest determines range of social relations under government of law, and individual's will has no effect in it. In the domain of private law, socialists have a high resistance against individualists. About marriage, moderators believe that neither role of will exist in it, nor has an unlimited role; rather it can be said that will plays a role in agreement of marriage ,but it has a minimal role in the sequence of effects of contract. The role of will is not infinite in conventional commitments, rather it is always constrained to public order and good behavior; its role is little in the contracts related to public order of society.

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