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THE RELATION BETWEEN PRINCIPLE OF CORRECTNESS AND PRESUMPTION OF INNOCENCE

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ABSTRACT

In this article, we discuss in brief the practical principles and four types of practical principles. They include principle of previous state authorization, presumption of innocence, principle of option (right of choice) and principle of precaution. We discuss that the practical principles don't discover the real rule, but they are considered as *prima facie* (secondary) rules. We discuss in detail the presumption of innocence and its types. They are rational discharge and religious (lawful) discharge. Presumptions and their usage in jurisprudential rules are also studied in this article; principle of correctness is included in Presumptions which discovers the reality; and usages of the intellect will be conducted based on it; so, the legislator verifies and ratifies the usages of the wise. Principle of correctness is the first principle which is conducted in the dominant nature of every things and the generality of correctness principle rule includes rule of *Tajavoz* and rule of *Feraq*. The conduct of correctness principle needs some conditions which are mentioned before and the principle of correctness has priority over the authorization of previous state because it is considered as presumption and then this principle is conducted in all issues of contracts and unilateral legal acts; and even in some cases in which the first principle and jurisprudential perpetrator of the principle are considered, that is the principle of correctness. As a result, we can't say that principle of correctness is as subset of presumption of innocence.

Keywords: Presumption of innocence, Presumption, principle of correctness, conflict, principle of previous state authorization

INTRODUCTION

In the article "*despairing of proof and innocence"* (magazine of law and political sciences college, No.96, 2004, P: 258-259), the great men believe that principle of permission, principle of correctness in contracts, principle of freedom in contract and principle of absolute legal authority of owner to exercise dominion or control over property are considered as subsets and results of the presumption of innocence. It is mentioned in the article "*the nature of innocence in law and jurisprudence*" (law magazine of justice department, No. 80, 2014, P: 63) that principle is put aside in jurisprudence because of opposite evidence in general meaning (stronger principle such as authorization of previous state, presumption causing strict conjecture, and evidence in strict meaning). This question is asked whether the principle of correctness and presumption of innocence are included in practical principles or not; traditionally, theoreticians in law believe that principle of correctness is included in practical principles. It is a set of rational and lawful guidelines which are validated and described by legislator and intellect when there is ignorance and perplexity in real judgments. The objective of these *prima facie* rules and duties is to take the obliged person out of perplexity and wandering in practice and when the obliged person frustrates to reach a real rule, he will use these principles; theoreticians in law consider it as *prima facie* rules which don't discover the reality. They believe that evidentiality of practical principles is acceptable where there is no other evidence. There are two kinds of lawful rules: lawful real rules and lawful *prima facie* rules. The real rule is in fact a rule fabricated and described by holy legislator by considering the essences of objects regardless of knowledge or ignorance of the obliged person; knowledge and ignorance of the obliged man don't interfere in the ascertainment and non-ascertainment of this rule but knowing and not knowing could interfere in conditionality and unconditionality of that real rule. As the lawful rule is divided into two forms (real and prima facie), evidence is also divided into two forms: evidence of inference and religious circumstantial evidence (practical principles). All of them signify the lawful rule. Evidence of inference is proved by lawful real rules and is confined to religious sources of law or four proofs (Quran, tradition, reason and consensus); in this case, valid conjecture is called as presumption. Religious circumstantial evidence is in fact an evidence by which *prima facie* rule is proved. It is also called

as practical principles. These practical principles in turn include two types:

1. Special practical principles which are conducted in some of jurisprudential issues such as principle of cleanness, principle of legitimacy and so on.
2. General practical principles which are conducted in all jurisprudential issues (from issue of cleanness to the issue of blood money). These principles encompass four types: presumption of innocence, principle of precaution, principle of option, and principle of previous state authorization.

In this article, we will discuss practical principles, presumption of innocent and principle of correctness and their usages and relations and we will determine whether they are real rules or *prima facie* rules.

Practical principles and presumption of innocence

The obliged persons who are aware of secondary lawful rule include three types:

1. The obliged person who has finality towards the rule;
2. The obliged person who has conjecture towards the rule;
3. The obliged person who has doubt towards the rule.

Whenever finality occurs, it is proof in essence and no fabrication of validity and correctness is needed for it. But conjecture is not essentially proof because it has hypothetical or presumptive discovery in contrast to reality but it is possible for conjecture to be considered valid by legislator in some cases, in other words, legislator orders us to have confidence, to have compulsory obedience and to be bound over some conjectures. To sum up, it is not completely fixed.

Since doubt is equal in two sides and it cannot have any opinion on the one hand and there is no tradition and discovery of reality, it is not reasonable to consider it valid in this case. So, whenever a rule is legislated in the case of "doubt about real rules", it is the same as legislator says: "the event of doubtful rule has this kind of rule". This rule is a rule other than a real rule and is considered as doubtful for us. Whatever doubtful are in fact real rules and a rule which is considered for the event of doubtful rule is the *prima facie* rule and is opposed to doubtful real rule.

The evidence bespeaking this *prima facie* rule is called as principle. Whenever there is no evidence on real rule and we have doubt about the rule, principle is considered as valid.

Theoreticians in law divide the practical principles into four divisions. They believe

that practical principles are confined to these four principles based on rational restriction and induction, because in the event of doubtful rule (doubtful event), when the state of record is considered (it is valid in the viewpoint of legislator), it will be a conduit for previous state authorization; when the state of record is not considered, it includes two parts: In the first part, doubt is about obligation. It is considered as a conduit for innocence. In the second part, doubt is not about obligation. It has two subdivisions. Precaution is possible or impossible in it. When precaution is possible, principle of precaution is as a conduit. When precaution is impossible, principle of option is as conduit. These four principles are conducted in all cases of jurisprudence (Feiz, Alireza, *Fundamentals of Jurisprudence and Principles*, Tehran University Publication, 2012, P: 176-177). Then we will deal with the presumption of innocence using the words of Feiz. Whenever the obliged person has doubt in his religious and lawful duties (he has doubt about existence of religious rule from duties, obligations and unlawfulness) and whenever he couldn't prove or deny this rule by referring to the source, what should he do about this doubtful real rule? In this regard, famous theoreticians in law resort to the presumption of innocence. We discuss the rational discharge and the lawful discharge as following:

1. **Rational discharge**: it means that the intellect helps based on the rule "shamefulness of punishment without declaration of law" regardless of legislator rule about the event of doubtful rule, so that, whenever a law is not declared by legislation or is not received by us, being contrary to that doubtful law couldn't have any punishment; it is shameful for legislator to consider punishment for this dissent (Feiz, pp: 170-171). Mozaffar says about rational discharge that: "it is what the intellect commands about it and it doesn't include the fabrication of *prima facie* rule by legislator such as principle of precaution, principle of option and rational discharge; its resource is the intellect commandment on denial of the rule "shamefulness of punishment without declaration of law" and the content of rational discharge is only removal of that punishment and no rule is fabricated as permission by legislator; argument of parts is not included in rational principles such as presumption of innocence, because it doesn't involve the *prima facie* rule and argument of parts and

reliance on done act is considered instead of real act, because the content of rational discharge is only abolition of punishment (Muzaffar, Muhammad Reza, *Principles of religious Jurisprudence of Muzaffar*, translated by Mohsen Gharavian, Vol 1, Dar Al-Fekr Publication, P: 442).

2. **Lawful discharge:** it means that the legislator of Islam doesn't necessitate the precaution towards doubtful duty and event of doubtful rule and makes the human free to act or omit that doubtful thing. Therefore, whenever there is doubt in every event of doubtful rule and we don't receive its real rule, legislator enacts a *prima facie* rule which is apparent permission or lack of duty. For example, whenever the fumigation (smoking) rule or praying during watching the new moon is doubtful for us and there is no evidence for unlawfulness in the first example and no evidence for duty in the second example; then the legislator considers innocence and lack of indebtedness for both of them (Feiz, P: 171). Muzaffar says about the presumption of lawful discharge rule that: "this principle is fabricated by legislator in the case of doubt and perplexity; so, it encompasses the fabrication of lawful rule such as authorization of previous state and lawful discharge which are referred to permission, principle of cleanness and principle of legitimacy by legislator rule (Muzaffar, Vol 1, P: 442).

As we discussed earlier, the principle of rational discharge doesn't involve the fabrication of *prima facie* rule but the principle of lawful discharge involves *prima facie* rule and it doesn't discover the reality. As Feiz has said above, Sheik Farahi also considers two jurisprudential principles (principle of cleanness and principle of legitimacy) as presumption of innocence; he believes that these two principles are included in practical principles. He also says that these two rules are considered as principles not presumptions because these three rules are the same in the case of available evidence and suspicion. When suspicion is about legitimacy and unlawfulness, it is included in the applicability of legitimacy principle. When suspicion is about duty and unlawfulness, it is included in the applications of innocent presumption or principle of shamefulness of punishment without declaration of law. And when suspicion is about cleanness and impurity,

it is included in the applications of cleanness principle (Farahi, Seyyed Ali, *rules of jurisprudence*, First impression, Islamic Publication Institute, P: 412). Now, we discuss presumption and principle of validity.

Presumptions and principle of correctness

Lexically, presumption means indication. Idiomatically, presumption is a way towards lawful real law which is legislated for a person who is ignorant of real law; since presumption causes conjecture, the legislator knows it valid such as just tradition (unique tradition) and apparent meaning of Quran which discover the reality defectively; they are observer of reality or narrator of reality; but this kind of discovery, opinion and narration is defective and the legislator will compensate their defect and validate them because of this defective discovery about reality. For example, whenever the just narrator quotes from innocent person the duty of prayer, his words about duty of Friday prayer means that Friday prayer is a real rule for the obliged person; but this narration and discovery is presumptive, conjectural and incomplete; it cannot be considered as proof by itself. But whenever the legislator in Islam says to us with conclusive evidence that "you should verify the tradition of just and you should behave based on his tradition"; so, promise of the just narrator is considered as trustworthy evidence; it is in fact, evidence of inference which is called as presumption (Feiz, PP: 181-182). Jafari Langerudi says that "a presumption should have the following qualifications: first, it should discover and narrate another thing such as possession which narrates the ownership of the possessed thing (rule of possession); second, the mentioned discovery is not conclusive but conjectural (such as possession); third, the legislator has considered the mentioned discovery and uses it as a device for proof (such as Article 35 of Civil Code which declares that possession as a ownership is an ownership is an evidence for ownership unless the opposite of it is proved). Such a thing is called as presumption idiomatically and its relating evidence is also called as evidence of inference (Jafari Langerudi, Muhammad Jafar, *Law Terminology*, Ganje Danesh Publication, 2013, P: 77).

There are very few trustworthy presumptions about commandment. Most of theoreticians in law believe that trustworthy presumption could be found in tradition of the just, tradition of trustworthy person or rational rule. But there are many trustworthy presumptions about issues. Some trustworthy presumptions about issues include:

1. Tradition of possession owner about cleanness, impurity or ownership of what he possesses.
2. Tradition of woman about her affairs such as pureness period, menstruation, viduity period and so on.
3. Tradition of the just about an issue with his permanent oath.
4. Tradition and testimony of children about homicide or a crime they saw that it has occurred.
5. Possession which is an indication for the ownership of its owner (Feiz, PP: 182-183).

Feiz says that the principle of correctness is included in practical principles. No doubt, there are other practical principles which are responsible for explaining the error in law (mistake of fact) and are used in special cases such as principle of correctness, principle of incorrectness, principle of cleanness, and so on (Feiz, PP: 177-178). After we defined presumption, we will study the purports and contents of correctness principle, condition for conducting the correctness principle and its conflict with previous state authorization and presumption or principle of applicability.

Principle of correctness

The purports and contents of this rule is that whenever there is doubt in correctness or incorrectness of something issued from the sane obliged person, so correctness will be conducted on it and it is ignored until its corruption is not proved by valid proof. This rule or principle is very important and beneficial; many religious jurisprudential commandments and social and ethical principles are based upon this rule (Farahi, P: 93). Sheik Ansari called it as "principle of correctness in another act". He says that: "this rule is included in consensus principle from the viewpoint of *Fatwa*[1] and act among Muslims. It is the strongest evidence for validity of "usages of the wise". In this case, the intellect is predominant independently. So, if we don't use this rule, disorder will occur in the order of Resurrection and livelihood (Sheik Ansari, Sheik Morteza, *Favaed Al-Osul*, Mo`asseseh Alami, 1991,Vol 2, P: 393; Farahi, P: 93). The resulting disorder in this rule is more than the disorder resulting from omission of possession rule among Muslims (Sheik Ansari, Vol 2, P: 393). Therefore, it is ordained in the Article 223 of Civil Code that all transactions are based on correctness unless incorrectness is occurred (*Civil Code*, Didar Publication, P: 52).

Sheik Farahi explains the contents and purports of this rule and says that "this is the first principle which is conducted in

[1] . Religious opinion of a jurisconsulte.

predominant nature of everything; conducting in opposite direction of predominant nature is considered as incorrectness; this incorrectness is only occurred in a position in which there is an obstacle for conducting in predominant nature; it is not acceptable when there is possibility in which the agent has omitted the correct act and has done the incorrect act. We should consider three points about this rule. First, in spite of the emphasis laid on this rule by narrations and verses, it is not a compulsory obedience but usages of the wise are conducted on it. Second, correctness not only includes another act but also promise and belief. As tradition of *Feraq*[1] and tradition of *Tajavoz*[2] attribute to correctness of everything in which an act will be doubted after *Tajavoz* in that act and *Feraq* in prayer; in fact, these two traditions determine the applicability of correctness principle which refers to the human (Farahi, P: 95). Sheik Farahi believes that two rules of *Tajavoz* and *Feraq* are considered the same in one rule. Ibn Bakr quoted from Imam Sadeq (A.S) that: "when the human performs his ablution before prayer and he remembers well from the time he has doubt in it" means that the rule of *Tajavoz* and the rule of *Feraq* are considered as rational rules which include issues of ritual observances and transactions (Farahi, PP: 199-201). Ayatollah Sobhani verifies this issue and says that: "rule of *Tajavoz* and principle of correctness are common in judgment to correctness; in other words, they both have religious lawful effect. Their common benefit is that the rule of *Tajavoz* says about human act in which we has doubt in our act, so rule of *Tajavoz* says that if you pass through its place, you should ignore it; but principle of correctness is conducted in another act (Ayatollah Sobhani, *Darse Kharej* [3]). Everything is conducted on the predominant nature of correctness principle which denotes the generality of correctness principle. Third, judgment to correctness includes both Muslims and infidels; it encompasses all common and customary things between them (Farahi, P: 95).

Condition for conducting the correctness principle

Ayatollah Sobhani says in the *Darse Kharej of religious jurisprudence principles* that: "whenever the nature of an act is based on correctness and incorrectness is accidental, so the principle of correctness will be conducted; but whenever the nature of an act is based on

[1]. Sometimes, the person has doubt in the correctness of doing act after the end of that act; in other words, after the end of an act, we ignore the doubt and rule of Feraq will be conducted.

[2]. Sometimes, the person has doubt in doing previous part while doing the act. In this case, we ignore the doubt and rule of Tajavoz will be conducted.

[3]. The highest level credit in theological school and demonstrative and inferential rendering the lesson.

the incorrectness in which correctness is an accidental matter, so the principle of correctness will not be conducted.

Here are five cases:

1. The principle in selling the endowed property is based on the incorrectness. The endowed property will never be sold unless there is a dispute among beneficiaries of an endowment and there is possibility of prescriber whether we are confident in prescriber, we can conduct the principles of correctness.
2. The principle in selling the property of orphan is based on incorrectness. Don't approach the property of orphan unless a best means. So, whoever sells the property of orphan and we don't know whether he has earned interests or not, the principle of correctness will not be conducted.
3. The principle in unauthorized selling is based on incorrectness. Whenever a person sells the *Aba*[1] of another person in an unauthorized sale; if there is doubt in issuing the sale authorization, so the principle of correctness will not be conducted.
4. The principle in selling the mortgaged property is based on incorrectness. Whenever the vendor sells the original mortgaged property and claims that the mortgagee has issued the selling authorization, if there is doubt in the selling authorization, so the principle of correctness will not be conducted.
5. The principle in finding meat and flesh is based on unlawfulness unless in cases in which, it is purified; if a piece of meat is found in the way, we cannot conduct the principle of lawfulness (Ayatollah Sobhani, *Darse Kharej of religious jurisprudence principles*).

Seyyed Yazdi was the first person who has discussed the above mentioned issue in his book namely "endowment" in the section "*Molhaghate Orveh*".

The words of Ayatollah Seyyed Muhammad Bojnordi verify this issue; he says that: "if the original title is doubtful and uncertain, the principle of correctness will not be conducted because the intention of the title is a subject for this rule; as a result, the logical and consistent usages on validity of this rule is after ascertainment of the title principle (Musavi Bojnordi, seyyed Muhammad, *religious jurisprudential rules*, 2000, Moasseseh Nashre Oroj, P: 49)

[1] . Men's loose sleeveless cloak open in front.

and Sheik Ansari has said that: "the principle of correctness will be considered on contracts after completing the elements of contract which lead to the existence of the contract (Sheik Ansari, Vol. 2, P: 396). Sheik Farhi considers two conditions for conducting the principle of correctness:

1. The principle of correctness will be conducted when the title of a doubtful act (such as sale, mortgage, hire and so on) is ascertained; so whenever the title of an act is ascertained we can have doubt in the correctness of the act and then the principle of correctness will be considered. The principle of non-existence will be conducted until the ascertainment of the title and it doesn't relate to the principle of correctness.
2. Whenever the origin of doubt for the correctness of a thing is something out of itself, so, principle of correctness will not be conducted here, as it is not conducted when there is doubt in the correctness of endowment sale in terms of the existence of an authorization on which the correctness of endowment sale is based, because the title of endowment sale and its permission will be ascertained hen the authorization of endowment sale is ascertained; whenever the consent of the owner is ascertained in unauthorized sale, the principle of correctness will be conducted in this transaction. When the mortgagor sells the property of mortgage where the mortgagee is present, the principle of correctness will not be conducted in this transaction unless the authorization of mortgagee is ascertained (Farahi, PP: 97-99).

The conflict between principle of correctness and previous state authorization

Akhond Khorasani (may God bless his soul) says that: "rule of Tajavoz, rule of Feraq, principle of correctness and so on are considered as rule of possession; they are proved rules in errors in fact which have priority over previous state authorization and the reason of this priority is that these rules allocate the evidence of previous state authorization (Akhond Khorasani, Moassese Ale Bait, 1991, PP: 432-433). Sheik Farahi says that principle of correctness has priority over all non-existential authorizations of previous state because whenever principle of correctness is conducted about an object, non-existential authorization of previous state is also conducted which is contrary to the principle of correctness of that object. For example, whenever the doubt in the

correctness of sale is because of this doubt, is the sale is done under its conditions or not? Is the principle of correctness is conducted or the principle of incorrectness is conducted? Although non-existential authorization of previous state is conducted in nature and denotes the incorrectness of sale with no ascertainment of its conditions, the principle of correctness in sale has priority over it as in other cases because principle of correctness is considered as presumption and presumption has priority over principle of previous state authorization and other practical principles. If we assume that principle of correctness is considered as principle not presumption, it also has priority over principle of previous state authorization because if it doesn't have priority, it should be abolished (Farahi, P: 100). In order to understand more about this issue, we should read the *Darse Kharej* of Ayatollah Sobhani. In fact, all of our discussions in the principle of correctness is this discussion and religious scholars believe that the principle of correctness has priority over principle of previous state authorization. This priority could be shown in two explanations: first explanation, if principle of correctness doesn't have priority over principle of previous state authorization, so the principle of correctness should be abolished. Second explanation, principle of correctness is no longer needed because the case of correctness principle is often errors in fact. There are two types for errors in fact:

1. Sometimes we have doubt in whether the parts and conditions of act done by a person are available or not (doubt in availability of part or condition); in this case, the principle of previous state authorization determines that the principle of non-existence is availability of parts and conditions. As a result, necessity of previous state authorization is incorrectness of an act. If the previous state authorization has priority over principle of correctness, so the principle of correctness should be abolished.
2. Sometimes we have doubt in errors in fact and the source of doubt is not the availability of part or condition but the source of condition is the concurrence of the act with impediment and removal. For example, it is guessed that a person has said his prayers with impurity or polluted cloth. The requirements of non-existential authorization of previous state are concurrence of the act with impediment and removal, act is correct and the

principle of correctness is not needed here.

Therefore, when the authorization of previous state has priority over principle of correctness, we don't need the principle of correctness or it will not be conducted; so, this magnificent rule becomes useless. Therefore, jurists believe that the principle of correctness has priority over previous state authorization (*Darse Kharej*, Ayatollah Sobhani). Ayatollah Seyyed Musavi Bojnordi shows three reasons for this priority in which principle of correctness has priority over non-existential authorization of previous state:

1. Absoluteness contracted by consensus is based on the validity of correctness principle, so that, it includes cases about subjective non-existential authorization of previous state in the conditions of contract, contracting parties and considerations. Absoluteness contracted by consensus is the same as absoluteness of verbal evidence and is included in the domain of validity and is considered as presumption. It has priority over subjective authorization.
2. The logical and consistent usages are complete on the validity of rule in all nations.
3. The expedient signification of the phrase "the requirement for the words of the sage is that it isn't useless and abolished" is based on invalidity of subjective non-existential authorization of previous state in the cases of the correctness principle in all conditions including contract, contracting parties and considerations; because if subjective non-existential authorizations of previous state are conducted in the subjects of the rule, so no subjects are remained for the principle of correctness (Bojnordi, P: 57).

Seyyed Mustafa Mohaqqeq Damad says that authorization of previous state is a principle and principle of correctness is in fact considered as a presumption, because principle of correctness is validated by canon law as the rule of possession did. No doubt, presumption has priority over principle of doubt (Mohaqqeq Damad, Seyyed Mustafa, *rules of jurisprudence: civil section*, Vezarat Farhang vi Ershad Islami Publication, 1993, P: 223).

Seyyed Hassan Imami describes this subject in three chapters: priority of presumption over principle of non-existence; priority of legal presumption over authorization of previous state, and

priority of juridical presumption over authorization of previous state.

1. The conflict between presumptions and principle of non-existence is never assumed because the principle will be conducted if existence of the right is doubtful in present time and there is no evidence to prove its existence whether no sufficient evidence is available or no evidence is considered for plaintiff. Therefore, whenever there is legal or juristic presumption about the existence of the right in present time, no doubt is available for trial and proceedings in order to assume the conflict between presumption and principle of non-existence.
2. According to the Article 1322 of Civil Code, legal presumption is in fact a presumption in which the law ordains evidence on an act; in other words, it considers them positive in the existence of the right. According to the Article 1323 of Civil Code, legal presumption is valid unless there is evidence for its contrary. Authorization of previous state is not considered as evidence and it can prove the contrary of presumption. In other reasoning, legal presumption is considered as successor for certainty of an act and whenever there is maximum certainty about an act, no doubt is remained until the authorization of previous state is conducted.
3. According to the Article 1324 of Civil Code, validity degree of juristic presumptions is referred to the opinion of judge and since the judgment on proceedings should be based on knowledge or maximum certainty or an act which is considered as successor for maximum certainty; so, in the cases in which judge gains knowledge from external circumstances about the existence of the right for the plaintiff during trial, a judgment will be rendered based upon it and in the cases in which it doesn't gain knowledge, no judgment will be rendered. As mentioned earlier, authorization of previous state leads to conjecture for confidence and if knowledge is gained about the existence of the right, it is not considered as a case for conducting the p0rinciple of previous state authorization by juristic presumption (Imami, Seyyed Hassan, *Civil Law*, Islamiyeh Publication, 2013, Vol 4, P: 287).

Is the principle of correctness a principle or a presumption?

As mentioned earlier, authorization of previous state is on the top of principles and on the bottom of presumptions. Since the principle of correctness has priority over the authorization of previous state, the position of this principle is in turn among presumptions. Most of scholars of the principles are content with this discussion that the principle of correctness has priority over authorization of previous state and they didn't say that the principle of correctness is considered as a presumption. In this regard, Sheik Farahi states that the principle of correctness is a presumption because correctness means to realize and to meet the predominant requirements of the nature of an object. So, the wise pay attention to that and discover the reality. Correctness means to manifest a certain state. It is the same as manifestation of other presumptions such as manifestation of expression in its apparent meaning until a valid proof (such as literal content or non-literal content) is proved. The principle of correctness may be in doubt though it is in apparent state. Whenever the doubt is removed, the practical principles are no longer remained to use. In summary, the principle of correctness is included in rational presumptions by which the rational necessaries and its proofs are proved (Farahi, P: 99). Ayatollah Seyyed Muhammad Musavi Bojnordi considers the instrumentality and discovery of the correctness principle as a reason for being a presumption. He declares that the usages of the wise are based on the act of human towards correctness not on the applicability of act.

Seyyed Hassan Imami says that: "as Article 1321 of Civil Code has ordained, presumption is considered as an evident for a matter by law or judge" (Imami, Vol. 6, P: 231). Thus, according to this Article, he also considered the principle of correctness as presumption In the explanation of the legal principle of transaction correctness in the issues of general rules and effect of contracts on parties to the transaction, he mentioned that: "in order to preserve the social order, each transaction occurred between two or more persons is considered correct unless its contrary is proved. Therefore, whenever a person wants to remove the fulfillment of an obligation by invoking to the transaction, he should prove the occurrence of transaction in the court. Whenever the promise claims that there is incorrectness and lack of obligation, he could prove it. If he couldn't prove its incorrectness and invalidity, he has to fulfill it unless he claims its cancellation or he can prove it. The mentioned legal principle is included in the Article 223 of Civil Code; it states that each occurred transaction attributes to correctness unless

its incorrectness is proved. Jurists call this principle as the principle of correctness (Imami, Seyyed Hassan, *Civil Law*, Islamiyeh Publication, 2013, Vol 1, P: 283). According to the stipulation of Article 223 of Civil Code, principle of correctness is in fact a presumption.

As mentioned earlier, the principle of correctness is the first principle conducted about the predominant nature of every subject. Therefore, we deal with two usages of this principle in Islamic jurisprudential books:

1. It is mentioned in the nineteenth problem of section "rules of sale contracts" of the book *Al-Rowzah Al-Bahiyeh* that city-dweller cannot be used as a lawyer for a stranger who has brought goods and commodity into the city newly though he is villager, because prophet Muhammad (S.A) has approved this issue and says that: "city-dweller must not be as a lawyer for a stranger. God is the provider of daily bread for all people. Some religious scholars believe that this prohibition attributes to unlawfulness and if the tradition is correct, it attributes to goodness, otherwise, abomination is better because there is negligence in the evidence of abomination; first condition for abomination is the request of city-dweller, but whenever the stranger requests that, it has no problem. Second condition for abomination is that the stranger doesn't know the price. If the stranger knows the price. So it will not be abominable though it is considered as assistance for mere goodness. In spite of existence of prohibition, if he sells it, contract will be concluded. Although prohibition is ordained for it, there is no problem for the stranger to buy something in the city due to that principle (Shahid Sani, *Al-Rowzah Al-Bahiyeh fi Sharh Al-Lomah Al-Dameshqiah*, Dar Al-Taarof Lel-Matboat, Vol 3, P: 228). It is mentioned in the book *Mohashsha Al-Rowzah Al-Bahiyeh* that this principle is the same as the first principle and the objective here is lack of prohibition. The principle of correctness in fact is to transact with every person and it is contrary to this principle if we don't transact with some people. So, if there is a tradition contrary to this first principle (principle of correctness or principle of transacting with every person), it should be referred to that tradition not other traditions.

2. In the twentieth problem of section "rules of sale contracts" of the book *Al-Rowzah Al-Bahiyeh*, after describing the desirability of omission, the receiving caravan is discussed. The omission of buying something is gained by receiving caravans. The desirability of omission is conducted in consecutive illegal possessors though it is collateral; because as Imam Sadeq has said: "don't welcome and don't eat whatever is welcomed". Whenever people are prohibited due to the manifestation of prohibition, selling is correct based on both abomination and unlawfulness. So, there is no option for selling and customer unless in the case of option of lesion in which the defrauded has the right of lesion option but when we approached the boundaries of the city, it has no problem to purchase from that man, so that, the receiving caravans is not correct though the price of that commodity is unknown (Shahid Sani, Vol. 3, P: 229). It is mentioned in the book *Al-Rowzah Al-Bahiyeh* that the intention of the principle is the first principle or lack of prohibition. The principle of correct is in fact to transact with everybody and since this tradition has prohibited the receiving caravans, so this prohibition is only attributes to this tradition not other traditions.

CONCLUSION

As we mentioned earlier, practical principles are considered as proof where there is no evidence for real rule and the obliged person is in perplexity and wondering. In this regard, both intellect and Islamic law offered some ways by which the obliged person will not be in perplexity and wondering. These practical principles are considered as *prima facie* and don't discover the reality as real laws. Presumption of innocence is included in the practical principles; in other words, whenever we have doubt in obligation, presumption of innocence will be conducted. But, presumption is a way towards religious real law and is legislated for a person who is ignorant of real law; since it leads to conjecture, the legislator considers it valid such as the tradition with a single narrator which discovers the reality defectively. In this case, legislator says with conclusive evidence that we use it instead of reality; so, the presumption is a real law for us. Principle of correctness is one of the presumptions. There are some differences between presumption of

innocence and principle of correctness. They include:

1. Presumption of innocence is one of the practical but principle of correctness is one of the jurisprudential rules.
2. Presumption of innocence is ratified by intellect and Islamic law while being in perplexity and wondering but principle of correctness is included in the usages of the wise and logical and consistent usages. They dated the time of establishment of human society and the legislator has approved the usages of the wise.
3. Presumption of innocence is included in general rules and errors in law, but principle of correctness is included in fact.
4. Presumption of innocence doesn't discover the reality but principle of correctness discovers the reality.

Based upon above causes, there is no relation between presumption of innocence and principle of correctness and we cannot consider the principle of innocence as subset of presumption innocence.

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