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Research Article

The role of personality in creating, transferring and transforming commitment in Iranian law

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Abstract: Personality is considered as one of the influential elements in the formation of commitment. The relationship between a committed and a committed person and the subject of commitment has always been one of the topics of interest for jurists, especially in the German-Roman legal system. In this system, commitment is known as an obligation for the act or omission of the act, and in terms of its relationship with the debtor and creditor personality, various theories have been proposed, among which the theory of objectivity of obligation and the theory of personal commitment are the most important. Is located. According to the theory of personal commitment, commitment can never be considered as an element independent of the debtor's personality; Whereas in the objective theory or the kind of obligation, it is said that the obligation exists independently of the existence of the personality of the creditor and the debtor, and accordingly, the subject of the obligation can be separated from the personality of the debtor and the creditor without the need to abrogate it. And transferred to other pillars. The same discrepancy in the wave view makes the very effective connection of these theories in the nature of the transfer or transformation of commitment clearly apparent. This article seeks to examine the effects of accepting each of the views presented on the institution of transfer and conversion of commitment.

Keywords: transfer, transformation, commitment, objective, personality.

Introduction

Types of commitment conversion:

According to Iranian civil law, the conversion of an obligation is divided into three categories: the conversion of an obligation into a credit, the conversion of an obligation into an obligor, and the conversion of an obligation into a credit the conversion of the subject of an obligation. In this section, we will give an overview of each of them.

Conversion of obligation to validity Conversion of the subject of the obligation:

Conversion of the obligation into credit Conversion of the subject of the obligation is realized when the obligor agrees and the obligation is canceled from the original obligation and a new obligation is created instead. *Converting an obligation to a credit converting the subject of an obligation is achieved in two ways:*

By changing the subject and the subject of commitment: for example, instead of one hundred kilos of rice, he commits to one hundred kilos of barley.

By converting the cause of the obligation: for example, the obligation to pay one hundred million tomans for the price of the transaction becomes the obligation to pay one hundred million tomans for the loan contract.

Conversion of commitment to credit Conversion of committed crush:

The second form of obligation conversion is when the obligor changes the obligation. There are various definitions of this phrase by law professors. Some professors have defined the conversion of an obligation as the conversion of an old obligation into another obligation that

replaces it, in such a way that the previous obligation is destroyed and a new obligation is replaced. (Shahidi, 2004, p. 133) Others define the conversion of an obligation in this way they have defined: "Conversion of an obligation is a legal act, according to which the old obligation is annulled and the New Testament replaces it." Langroudi, 1999, vol. 2, p. 137) In order to be able to convert the obligation, firstly, the former obligation must be abolished, secondly, the new obligation must replace the former obligation, and thirdly, the guarantees of the former obligation are erased. Unless the parties agree to retain them (Jafari Langroudi, ibid., P. 114).

Conversion of commitment into credit of conversion of committed:

Conversion of a liability into a liability Conversion is when a third party assumes the obligation with the consent of the obligor. In this case, the obligation of the original obligor is abolished and his liability is released against the obligee, and instead another similar obligation is established on the new obligee. In this type of obligation conversion, in addition to the consent of the new obligee, the consent of the obligee is necessary. This is mentioned in paragraph 2 of Article 292.

Debt conversion is conceivable in two ways:

This is done with the consent of the debtor. In this case, the new obligation replaces the previous obligation. For example, the financial buyer, instead of paying the price of the transaction to the seller, commits to pay his debt to his creditor at the seller's request.

This should be done without the consent of the debtor and without his permission. Again, the principal debtor will be relieved and the minor debtor liability will be engaged, so it can be concluded that in converting the debtor's obligation; the debtor's consent has no role because his property is not seized so that he needs his consent.

The role of personality in transferring and transforming commitment:

Much has been said in the writings and works of scholars and jurists about the nature of the will and its role in creating commitment. We know that the will is the building block of the obligation in the contractual obligations, which has very important effects. Commitment dependence on personality also had very important effects that were examined instead. The effects of the separation of personality and assets in creating a commitment on the transfer and conversion of commitment are also debatable. Acceptance of any of the perspectives on the personality or materiality of the obligation plays an important role both in separating the conversion of the obligation from the conversion of the obligation and in identifying their instances and effects. In this article, by studying these two issues, we will examine the role of personality in the transfer or transformation of commitment.

Two views were presented on the dependence of the commitment and its essence on the personality of the parties. The view that considered the commitment as personal and considered it as a credit being that was born of the personality of the parties and could not be imagined without them, and the view that considered the commitment as independent of the personality of the parties and as a creature that has its own independent life. . The separation of these two views from each other will cause many unknowns to be resolved in this regard and many legal phenomena will be given scientific foundations.

Effects governing the acceptance of the theory of personal commitment:

Some jurists believe that the personal nature of a commitment outweighs its economics. Thus, one of the theories related to the obligations is "personal theory", which has its roots in Roman law. In this theory, the main axis of an obligation is the personal relationship between the obligor and the obligee, which is insisted on by Planiol in France and Savini in Germany. According to this theory and especially with Savini's justifications, the essence of obligation is the relationship

between the obligor and the obligee, which gives the obligee to the obligee, which, like imperfect slavery, can be felt in this relation of the obligee's domination over the obligee. Thus, in Savini's view, commitment and ownership are almost identical in nature; Except that the difference is in the degree of domination that the owner and the obligee have. Because in slavery this domination is complete and in commitment this domination is incomplete and the obligee has only the right to force the obligee to fulfill the subject of obligation (Katouzian, 1374, vol. 3, p. 174).

According to jurists, the effect of this theory is that from this point of view, the objective right is denied and all rights are close to the religious right or the law of obligations. As a result, all financial rights, whether liability rights or property rights, are analyzed by the criteria in the law of obligations. According to the proponents of this theory, right only makes sense in the case of a person, not an object or an animal. These are the only people who can have rights and duties.

The premise of personal theory is somewhat correct. Obviously, rights and duties can only exist in the relationship of persons, and objects cannot have rights and duties, except when they have a legal person as a set of objects. Therefore, only a person can have rights and obligations, whether this person is a real or legal person (Article 588 of the Penal Code). On the other hand, it is correct to say that in the face of the objective right, the whole world is obliged to respect the right of the right holder. Article 545 of the ICCPR stipulates: "No one may be compelled to transfer his property except for the benefit of the public interest or for the compensation of pre-existing just damages".

However, we will see that the acceptance of the personal view of the obligation and the impossibility of separating the obligation from the personality of the parties will create effects that are not compatible with any of the legal principles and we will have to resort to some institutions to justify them. They do not exist.

Impossibility of direct transfer of obligation to a third party without termination:

Lawyers say that if we consider commitment as a part of the essence of the committed personality and cannot imagine the commitment without a committed personality, then it will not be possible to transfer the commitment with the same quality and characteristics (Safaei, 1389, vol. 2, p. 114). Because the transfer of the obligation to the detriment of the third party, regardless of the consent of the third party and the parties to the original obligation, requires that the obligation be separated from the person of the first obligor and placed on the second and new obligor. This requires that in the realm of credit, part of the time to imagine commitment without the obligor. And this will not be possible.

Thus, the direct transfer of a commitment without breaking it becomes difficult and almost impossible. Therefore, in order to be able to release the obligor from below with an obligation and assign the obligation to another, in addition to the other conditions mentioned by the jurists, it is necessary from the analytical point of view that the first obligation is revoked and the second obligation is replaced by the obligor. Create a new one. This creates many effects of a waiver, some of which we will discuss later; but, for example, one of the most important effects of converting an obligation is that by canceling the obligation to create it on the new obligor, all the guarantees and guarantees of the obligation are destroyed.

Impossibility of transferring religious rights to a third party without revoking it:

Another aspect of commitment is its positive aspect, which has been used in many other meanings such as religious right, desire, and so on. The use of multiple terms has no effect on the nature of the matter, and we mean the religious right is the same right that is created in the

obligation for the obligee and against the obligee; because, as jurists have pointed out, every obligation has at least one obligor.

The analysis that was presented about the impossibility of direct transfer of obligation to third party liability without termination of obligation can also be expressed in terms of transfer of positive aspect of obligation. With the explanation that whenever an obligation is created on personal liability, it is also created in favor of the other party. In other words, the same relationship that exists between commitment and the character of the obligee exists with the same permanence and consistency between the commitment and the obligee. Therefore, in order to transfer the obligation in favor of another person, this dependence must also be eliminated, and the disappearance of dependence in the theory of personal commitment is not possible except by destroying the principle of obligation. Therefore, the transfer of the subject of the obligation is not possible in spite of other conditions, except with the fall and disappearance of the principle of the obligation with all its elements and the birth of a new obligation with its unique features and characteristics. That is why in the conversion of a Roman-German obligation, the agreement of the parties to transfer the debtor's liability to a third party or the transfer of the right created for the obligor in favor of another person is accompanied by the fall of the obligation and the loss of the previous obligation, while in jurisprudence and law Islam, despite the institution of transference and the transmission of religion, the previous commitment remains in place and is transmitted to the third person or persons with the same characteristics. In fact, in spite of transference and religion, and the existence of contracts such as remittance, there was no need for an institution to transform the German-Roman commitment; However, at the time of drafting the rules of the institution, the legislator also added the conversion of the obligation to the civil law, but apparently also made changes in it, so that from the legislator's point of view in converting the obligation into credit, the converting the obligation and converting the obligation into credit The commitment of the former obligation is still valid and it is only around the obligation that it changes (Shahidi, 2004, p. 96).

Impossibility of paying the debt by a third party:

If the obligation depends on the debtor's personality, it is the only debtor who can fulfill the obligation. Because the essence of commitment depends on the personality of the debtor, and commitment finds meaning only when the person who created it still exists. Therefore, the obligation should not be considered as an independent existence of the obligor, and this is why jurists believe that by accepting the theory of personal obligation, it will not be possible to pay the debt by a third party (Emami, 1371, vol. 1, p. 125). Because the payment of debt by a third party has a meaning when the obligation can be conceived separately from the debtor's personality as an independent being and the third party can destroy it with the effect it has on the independent being, even if the principal debtor is satisfied. Has no payment of debt and even if the debtor is not aware of the payment of debt by a third party (Katozian, 1374, p. 295). Whereas if it is supposed that the obligation is directly dependent on the debtor's personality and only makes sense when the debtor's personality is also involved, then the only way to achieve the obligation and eliminate it is to resort to the obligated personality and achieve it is. The result is that this is the only obligor who has access to the principle of obligation and can destroy it; so every third person if he intends to pay the debt, he must implement it through the obligor and he himself will not have the right to interfere personally and directly.

Effects governing the acceptance of the theory of materiality of obligation:

Materiality and kindness of obligation is the second view that has been willed by some jurists. Instead of the personal aspect, this group of jurists emphasizes the economic nature of the obligation, and for this reason, in contrast to personal theory, another theory developed in German law called material theory, headed by Jی rk. In this view, according to German law and

unlike Roman law, personal relationship obligations are not the criterion, and most of the subject of the obligation is property and the subject is the economic aspect of the obligation (Marty. Rayaund. Jestaz op. Cit: 1). Thus, commitment is based separately from the persons in this relationship and is based more on its subject matter, namely property and financial rights (Mazeaud, 1978: P11). As a result, by separating the obligation from the parties, ie the obligor and the obligee, the obligation has more to do with its subject, ie property, and this factor gives the obligation a financial aspect and makes it valuable to the parties. As a result, market obligations have economic value. Such a view was not limited to the knowledge of German law and was extended to French law by Sally and Gudme (Marty. Rayaund. Jestaz op. Cit: 86). Because when the obligor receives his right, he achieves the object of the obligation. In this theory, commitment is justified based on the concept of assets. That is, commitment is part of an asset, not a personal concept. Legally, an asset is a set of assets that includes both claims and property, which is the "positive or positive" element of the asset, as well as debts and liabilities, which is the "negative or negative" element of the asset. The right to demand the performance of the obligation as a right that the obligee has from the obligee is also a part of the assets and therefore takes on a material and financial character and the obligee and the obligee person take on a weaker color in it.

Payment of debt by a third party:

The civil law accepts the payment of debt by a third party even without the need for the permission of the debtor. Of course, the payment of debt by a third party should not be confused with any of the institutions studied. In other words, the payment of debt by a third party is neither a conversion of an obligation nor a transfer of debt. Rather, fulfilling an obligation is considered to have a specific meaning, which from the point of view of some jurists is a legal event (Katozian, 2002, p. 102) and some other jurists have considered it a legal act (Shahidi, 2001, p. 57). However, the question is, if the obligation has a personal aspect, how can the payment of the debt by a third party be justified? This is because in the theory of personal obligation, third parties must obtain the consent and will of the debtor to pay the debt, while the legislator, in addition to not stipulating the consent and will of the debtor and the creditor, has not accepted their knowledge.

The legal nature of third party payment of debt:

One of the important questions in the field of civil law is recognizing the nature of third party debt payment? In fact, it should be asked whether a third party commits a ritual by paying a debt. Should payment be considered a mere legal event? In this article, we summarize the various perspectives that have been presented in this regard.

Contractual nature of third party payment of debt:

The payment of the debt by a third party may have been made at the request and consent of the obligee. In this case, the payment becomes contractual in nature. There is an opinion that the debtor's permission to a third party is an agreement to pay his own debt: because when the third party pays his debtor's permission, in this case the fulfillment of the covenant requires the agreement of the original debtor and the third party, which is realized by contract. And is in the category of legal acts and the occurrence of compromise between the third party payer and the debtor is clearly seen (quoted by Katozian, 1371, vol. 3, p. 165).

In response, it should be said that the permission of the debtor to a third party in performing the religion, according to Article 267 BC, is only for the personal reference of the third party to receive what he has paid, and has no effect on the nature of performing the religion.

Because according to the first part of Article 267 BC, the legislator has stipulated: "It is also permissible for a non-debtor to perform his religion ..." and this general permission of the legislator indicates that a third party can practice his religion without the debtor's permission and acceptance. And under the said article, indicates the permission of the persons (debtor) to refer or not to refer the third party to the debtor. Not that this special permission of the persons indicates the contractual nature of the performance of the religion by a third party, and on the other hand, because the permission is not intended to be written, it is neither a contract nor a contract. (Jafari Langroudi, 1388, p. 26) However, it is a voluntary legal act such as confession and testimony that is the source of legal effects, so the debtor's permission should not be considered a kind of compromise with a third party, and even if we consider permission as an agreement, it still cannot be He considered the debtor's permission as a kind of compromise with a third party.

Also, if we consider the payment of the third party with the permission of the debtor as an agreement, this agreement is not necessary to fulfill the covenant and among its pillars, because the fulfillment of the covenant does not have more than two pillars:

1. Existence of an obligation that must be fulfilled.

2. Execution according to the provisions of the contract, whether at the will of the debtor or a third party, but since the execution of the obligation depends on its provisions and nature, sometimes this execution requires the permission of the debtor and its performance by a third party. Agreement is interpreted. While this agreement is not necessary to fulfill the covenant and among its pillars, but is a kind of preliminary agreement on how to fulfill the obligation, not an agreement that is effective in the legal nature of the performance of religion by a third party, to make it a contract.

Moreover, it is true that fidelity to the covenant requires the permission of the debtor, but it should not be concluded that the fulfillment of the covenant is done by consensus and has a contractual nature. The main feature of the contract is the freedom to choose, compromise and influence the composition. Because in fulfillment of the debtor's promise, he is already obliged to transfer the money to another, he has no freedom in choosing the recipient, nor in choosing the amount and the description of property, according to the law, must be committed to the religion of obligation, otherwise it will be forced to fulfill its obligation. So how can it be claimed that by performing the debt through a third party, there is a compromise between the debtor and the third party, whose will has no role in the fall of the obligation by the third party. And the fall of the obligation is also the material result of the fulfillment of the obligation and is related to the intention of the third party, not the debtor (Samavati, 2016, p. 85).

The rhetorical nature of the payment of debt by a third party:

In the case where the third party pays the debtor without the debtor's permission and without any obligation to the creditor and pays the debtor's debt without undertaking it, the fulfillment of the promise in this case is also obligatory and occurs only by the third party. It may be that it causes the property to be owned by the creditor, and this voluntary choice requires the composition and decision of a third party, and therefore the third party must be competent to do so, and the necessity of possession for the third party is a sign of the contractual nature of debt. He is not, but to seize his property. And if the third party does not fulfill the promise without the will to fulfill the obligation. Therefore, the third party who pays his debt without the permission of the debtor, his payment appears in the donation and he will not have the right to refer to the debtor.

Also, the performance of a debt by a third party should not be considered as a prying payment of another religion, because according to the principle established in Article 267 BC, there is no

interference in the performance of a debt by a third party, so that the third party performer has the right to refer to him. Have. Therefore, according to the mentioned article, there is no need for representation to fulfill a promise that is the responsibility of another. A third party can do such a favor (Samawati, ibid., P. 90).

And if the character of the debtor is not effective in how the obligation is fulfilled or the creditor passes this feature, this action has legal effect and absolves the debtor. However, it is effective in the relationship between the performer and the debtor with his permission, which means that the authorized third party has the right to refer to the debtor. Fulfillment of the covenant, then, should not be considered as a matter of pecuniary transaction. In particular, in the legal language, fulfillment of a covenant is not among the transactions. In other words, fulfillment of a covenant is among the matters whose effect appears with the payment of debt and there is no need to attribute this action to the debtor so that his consent is a condition of influence. Be a legal act and be subject to the title of voyeur. (Katozian, ibid., P. 100).

It is also the case that in the contracts concluded for the fulfillment of the debtor's contract, such as guarantee and surety contracts, the debtor's consent is not a condition and the compromise between the guarantor or the guarantor and the creditor has legal effect. In terms of civil rights, payment is based on two pillars of interaction. The performer is the doer and the recipient is passive and affected by the action of the said doer, and no prying on the part of the doer (performer) is conceivable because the performance of religion by the non-debtor without permission and even despite his prohibition according to Article 267 BC. It is valid. Despite this legal permission, a voyeuristic impression on the part of the performer is not possible (Jafari Langroudi, 2009, vol. 1, p. 714).

However, the idea of usury is possible on the part of the recipient, such as introducing oneself as a representative of the obligee and receiving the pledgee under a false name. This is a voyeuristic act and the Civil Code, according to Article 272, allows this usurious payment to take effect. Is.

The fulfillment of the debt by a third party is done by the will of the third party and the creditor's consent has no role in its occurrence and he cannot even deny the fulfillment of the fulfilled promise and the incorrect realization of the debt paid with the provisions of the main obligation causes the contract to be invalid. Neither the rejection of the creditor (Katouzian, 2002, p. 197) and on the other hand the debtor has no role in the occurrence and establishment of legal action by a third party, which means that not only the consent of both parties is not a condition for termination and dissolution of the contract. He is located cannot be found.

The necessity of this analysis is that: just as a person, by his own will, can alienate himself for profit while concluding a conditional contract, in the performance of religion by a third party, the third will is the main basis for fulfilling the obligation and the debtor and creditor satisfaction should not be one of its pillars .The only necessary condition for the influence of rhetoric on another is that it be in his favor and does not impose an obligation on a foreigner that such a condition exists in the performance of religion by a third party. And even the refusal of the third party to fulfill the obligation by the creditor or possibly the debtor does not harm the influence of the third party, and the debtor's permission to the third party to pay the debt is not necessary from the third party legal act, and the conditions of its occurrence are subject. It is a general rule.

Fundamentals of payment of debt by a third party:

Regarding the rule of paying the debt owed by a third party, apparently in jurisprudence, it has not been discussed independently and comprehensively in jurisprudential books, but has been mentioned briefly in the subject of religion or fulfillment of the covenant. In Iranian civil law,

only one article, namely Article 267 of the Civil Code, is dedicated to it, which is in fact the legal and main origin of performing religion from a third party, and there are no other direct materials related to the payment rule, but related and relevant materials. To all is the fulfillment of the covenant.

Texts of subject laws:

The first basis for the permission to pay the debt by a third party is the text of the relevant laws, here are two examples of the most important of them.

Civil Code:

Article 267 of the Civil Code stipulates: It is also permissible for a non-debtor to perform a religion, even if it is not allowed by the debtor, but a person who performs another religion has the right to refer to it with his permission, otherwise he has no right of recourse.

From the consideration of this article, it is clear that the principle of payment of religion other than the third party is legally permissible, whether with permission or without permission. And the payment can be with the intention of donation or non-intention of donation, which in the first case is not a right of recourse and in the second case there is a right of recourse. The right of appeal must be due with the permission of the debtor and within the limits of the permission and payment must also be made. In addition, the meaning of this article is other than the issue of guarantee (Articles 685 and 720 of the Civil Code) and also this institution is out of the discussion of transfer and fulfillment with a deputy or conversion of an obligation, which has been explained before.

Civil Judgment Enforcement Law:

Article 55 of the Law on the Execution of Civil Judgments, approved on the first of October, Article 1356 of the solar law, and stipulates:

"If convicted, he can deposit all legal debts and damages in the registration fund or the judiciary with the rights of the government, as the case may be, and request the confiscation of property and the restitution of his rights. In that case, the deposited funds will be confiscated immediately".

It is clear from the accuracy of the text of the article that the payer is placed as the debtor's deputy and in fact pays the obligated debt with the permission of the ruler and then demands it from him. Explain that after depositing the amount of deposited funds from the property the convicted person will be detained and the auction operation will continue and there is no need for a petition.

Commercial Law:

Article 270 of the Commercial Code stipulates that any third party may, on behalf of the issuer or one of the endorsers, process the object of your objection. Third party personal involvement and payment must be stated in the objection or below, and Article 271 states: The third party who paid you has all the rights and duties of your holder. In other cases, such as the last part of Article 124 of the Commercial Code regarding the joint stock company, it indicates the referral of one of the partners after the payment of the creditor's claim to the other partners, which is in fact the second referral. In this reference, because the single partner pays the entire debt of the company to the creditor without the permission of the other partners, he refers to them in accordance with the law in relation to the share of other partners. The company is a partnership.

Social interests:

In law-making, unlike in the distant past, social interests have always been at the heart of law-making in the world today. Now, the materials may be inherently in the public interest, or the legislature may seek lofty goals and help human beings by creating pristine laws, that is, in the long run, it may take on a general form and pursue a general character. Therefore, without a doubt, it is often always central to the enactment of social interest laws. Because when the plural is considered, it inevitably includes the individuals as well. Carefully in Article 267 of the Civil Code, this social interest is very clear because the soul of the third action in paying the debt owes a social action and accuracy in the philosophy of Article 267 of the Civil Code indicates that social interest has been effective in creating this prescription. In Article 267 of the Civil Code, virginity has later developed and become a factor that in future laws, interests are created in other forms such as legal presumption or based on other legal rules such as causation or ethics (Amin, 2013, p. 53).

For example, in Article 1205 of the Civil Code (Amendment), the legislature has stated the legal presumption of borrowing in this article, and in general, it has moved away from the traditional idea of permission and seeks other pendants that can revive unauthorized third party rights. Demand in the form of debt is nothing but a social interest. However, from another point of view, it is also the basis of the rule of benevolence.

On the other hand, from the perspective of Islam and religious emphases, the issue of third party rights can also be examined because the religion of Islam considers the payment of debt to the debtor to be praiseworthy and even the Holy Quran praises third party deeds in one verse (Amin, ibid., P. 58).

Therefore, the general order of the society and the presumption of the benevolence of the third party in the payment of the debt of the debtor are among the causes of creating a law with the aim of social interests in the payment rule.

Theory of materiality of commitment:

Payment of ordinary debts by a third party:

What the jurists say is that the payment of debt by a third party is justified only when we consider the obligation to be part of the pledged property and part of it, and not part of the independent pledged personality. To analyze this view, one must assume that assets are in fact a set of debts and obligations of individuals. Therefore, whether a person has a positive obligation or a negative obligation, in any case, this obligation enters the person's property and becomes part of the objects inside it. Now, if a third party wants to reduce one of the negative assets and liabilities from the property and deduct it from its heavy burden, it must basically have the debtor's permission with it, unless the legislator issues a special permit in this regard. Article 267 BC allows this permission to enter the property of individuals to reduce their obligations without the need for permission and will and even informing the owner of the property. However, the legal withdrawal of this property without the permission and will of the owner of the property is something that is not accepted by any common sense and no legislation issues a special permission in this regard; except in special cases. One of these special cases is the seizure of the obligated property to enforce the subject of the obligation (Katozian, ibid., P. 250).

Fulfillment of obligations with the obligation of stewardship:

The theory of the materiality and kindness of the obligation is not immune to criticism, and some of these criticisms have entered, and the absolute materiality of the obligation is not compatible with the realities of our legal system. One of these criticisms is that if the obligation

is not personal and is part of the property of individuals, why is it not possible for a third party to fulfill the obligations in which the stewardship of the obligor is a condition?

In justifying this, some jurists believe that the theory of materiality of obligation should not be accepted absolutely and there will always be modifications in it (Yazdanian, 2016, vol. 1, p. 19). Some other jurists have expressed the same view with a bit of condescension.

However, in our view, the prohibition of the performance of obligations in which the obligor's stewardship is required by a person or third parties does not violate the material theory and the nature of the obligation. In such obligations, the obligation of homosexuals has a kind of aspect, but some obligations, due to their nature, have the implicit condition that the subject of the obligation be executed only with the supervision of the obligee and the interference of a person or third parties is prohibited. What if we say that in the obligations in which third party stewardship is a condition, the obligation has a personal aspect, it should not be able to fulfill it in an absolute way other than the obligation of another person, while Article 269 BC explicitly allows Gives to fulfill the obligation with the consent of the obligated third party. Here we have to say that the personal aspect of the obligation becomes a kind of aspect with the will of the obligee; however, this argument should not be accepted, because the nature of obligations is not something that can be changed by the will of individuals. Commitment has either a personal aspect or a typical aspect or it has both aspects. But what is obvious is that these aspects cannot be changed by the will of the parties (Ashouri, 1353, p. 49).

Principle of independence of signatures and non-attention to defects in commercial documents:

One of the characteristics of commercial documents is the principles that govern them and do not exist in similar and civil obligations and institutions. One of these principles is the principle of independence of signatures and disregard for fundamental objections.

Definition of principle:

The principle of independence of signatures, which means the independent validity of each signature and the non-extension of the invalidity of one signature to other signatures, is one of the important features of commercial documents. (Nouri, 2004, p. 158) According to this principle, each signatory of a commercial document According to the relevant regulations, he is responsible for the obligations arising from the document, except in exceptional cases, such as lack of competence and intention and consent of the signatory or lack of basic and formal conditions of the document.

Justification of the principle based on the theory of the materiality of the obligation:

About the basics the principle of independence of signatures has been presented by jurists, but in fact none of them justifies the existence of such a principle. Some jurists consider the principle of independence of signatures and the principle of non-observance of objections as special features of commercial documents and consider its basis as facilitation of commercial relations and granting credit to commercial documents (Nouri, ibid., P. 167). Some other jurists also believe that the statute of indebtedness in commercial documents makes the objections related to the former Ayadis invalid in future Ayadis (Erfani, 2006, vol. 3, p. 150). These jurists believe that the statute of indebtedness in this case is an absolute statistic and the opposite cannot be proven. Of course, in this case, it should be noted that if a person pays the amount directly to the holder of the commercial document, they can no longer use the mediation statistic.

However, from our point of view, the principle of independence of signatures and the principle of non-attention to objections can be accepted only if we believe in material theory and theory and a kind of commitment. Because if the obligation has a personal characteristic, by creating an

obligation by the issuer of the document and by endorsing and transferring it, in addition to the previous obligation must be revoked, the existence of a fundamental objection among some parties invalidates the obligation and in some cases it will be scrapped. For example, if the issuer is incompetent at the time of issuance and then the commercial document reaches other persons by endorsement, then it must be said that the person of the first obligee influences the obligation and basically no obligation is created so that it can be transferred.

On the other hand, if after the issuance of a commercial document in the name of a certain person, that person transfers that commercial document with the noon signature, the payment of the debt by the issuer will not affect the salary in good faith. This can also be justified by the fact that an obligation lives as an entity independent of the personality of the parties. Therefore, when the positive aspect of the obligation is transferred to another by signing the document at noon, the other has no right to have the previous one to be able to fulfill it, so whenever the issuer of the main and final obligor of the commercial document plays the religion in front of them first, If a should be considered illegal. Because acting was not for religion but for a committed character. While accepting the theory of the personal nature of the obligation, the subject of the obligation is never separated from the personality of the officials of the document, and the commercial document is in the hands of whoever is, the debt is revoked by paying the debt to the first holder of the obligation.

Legal personality of the property after the death of the owner:

Another effect of accepting the view of a kind of obligation is to create a legal personality for the estate after the death of the owner and before the division of the estate. As long as the owner is alive, rights and obligations are in his possession. After the death of the owner, considering that before the division of the estate, logically no rights and obligations were created for the heirs, so it should be said that the obligations (including rights and debts) were not included in the heirs' property; Because a person or persons may claim a right to the estate and prove it as well.

The legal personality of the estate will have meaning when we accept that the obligations, both positive and negative, have an existence independent of the personality of their parties, and only if the legal personality of the estate and all legal entities in general are valid. Finds (Katozian, 1374, p. 300). However, with the dependence of the obligation on the personality of the parties, with the death of one of the parties, the obligation must be considered revoked and at least it must be accepted that immediately due to the succession of the heirs, the obligation becomes dependent on the personality of the heirs. In the first analysis, I saw that almost all jurists believe that the deceased's estate has an independent legal personality before its division (Katozian, 2009, p. 140). The same analysis can be made of the legal personality of commercial companies. The company should be considered as having legal personality when its property and assets can be imagined without having an independent real person, otherwise the separation of the company's property and assets from the personality of each of the partners will be impossible.

Conclusion:

Lawyers say that if we consider commitment as a part of the essence of the obligated personality and cannot imagine the obligation without the obligated personality, then it will not be possible to transfer the obligation with the same quality and characteristics. Because the transfer of the obligation to the detriment of the third party, regardless of the consent of the third party and the parties to the original obligation, requires that the obligation be separated from the person of the first obligor and placed on the second and new obligor. This requires that in the

realm of credit, part of the time to imagine commitment without the obligor. And this will not be possible. Thus, the direct transfer of a commitment without breaking it becomes difficult and almost impossible. Therefore, in order to be able to release the obligor from below with an obligation and assign the obligation to another, in addition to the other conditions mentioned by the jurists, it is necessary from the analytical point of view that the first obligation is revoked and the second obligation is replaced by the obligor. Create a new one. This causes a lot of effects from the cancellation of the obligation, but for example, one of the most important effects that the conversion of the obligation entails is that by canceling the obligation to create it on the new obligor, all the guarantees and documents of the obligation are also It goes away. On the other hand, the theory of signature independence is obtained by separating the same theory, and many legal institutions in civil law and other relevant laws are the result of this separation or correlation between the personality of the debtor and the creditor with the subject of the obligation.

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