

Investigating the nature of commercial property and business, craft and trade right in the law of landlord and tenant of 1998 in Islamic jurisprudence

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Abstract: From the past time, according to the prevailing custom of tenant relationships, business places have had different superior rights and privileges than residential places. Considering the historical background, the common custom and habit between businessmen and commercial are seen to have a major role insets blushing commercial property and business, craft and trade right. Commercial property refers to the payment given to the landlord by a tenant based on the location and condition of a commercial place through the voluntary agreement of the contract parties so that the landlord loses his right. Business, craft and trade right refers to the right that is considered for the tenant due to working in a commercial place based on the job status and the location of the rented place. Despite the clear distinction between commercial property and business, craft and trade right in theory, these two rights are seen as one in practice among traders, merchants, lawyers and are used interchangeably. The nature of commercial property is financial, immaterial and movable, but the nature of business, craft and trade right is financial, spiritual, and immovable. The above right is suspended and is not independently transacted. The majority of jurists view only commercial property as legitimized between the two categories of commercial property and business, craft and trade right. If the business, craft and trade right means a right established due to the tenant's working on his job and does not mean commercial property, then it is not legitimized based on the law on the relations between landlord and tenant, passed in 1977.

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1. Introduction

In public opinion and the viewpoint of somelawyers, the meaning, concept, and nature of commercial property and business, craft and trade right have been integrated. There is disagreement among jurists whether commercial property and business, craft and trade right are lawful or are the same. There are no definitions for commercial property and business, craft and trade right in our established laws and holy law. Commercial property is the right given to the landlord or tenant who has paid money in the beginning of making a contract or has considered some conditions according to conditions of rights given to him, but business, craft and trade right is the right considered for the tenant due to working in a commercial place based on the job status and the location of the rented place. The present study aims at investigating the nature of commercial property and business, craft and trade right in the law of landlord andtenantof1998 in Islamic jurisprudence as well as their differences and similarities.

Since the law of landlord and tenant has changed in 1977, 1981, and 1998, and each of these laws investigated commercial property and business, craft and trade right in terms of time conditions, and

as our rules ,particularly on the relationship between individuals, are mostly derived from the Islamic law, the present study considers commercial property and business, craft and trade right in the law of landlord andtenantof1998 in Islamic jurisprudence to investigate the nature of these two categories in Iran law and Islamic jurisprudence.

Landlord and tenant law of 1998 was passed by the parliamenton17/8/1997 and was conducted from 1998. Its general goal was to make the law of landlord and tenant relationships uniform throughout the country. This goal includes the existing absinthecountry, and their frequency and types well as all leased relationships in residential, commercial, educational, places and so on. Especially after the Islamic Revolution, other laws have specifically been approved which have confused people in courts. Regarding commercial property and business, craft and trade right, there are vague points and potential conflicts in combining them and the legitimacy of each of these two in Iran's law at the beginning and continuing a commercial contract. The major goal of the law of landlord andtenantof1998 was fighting and destroying the legal system of landlord and tenant law, particularly confronting the business and trade

entity, but whether or not the law has been successful in reaching its goals needs to be discussed.

Method

Library method was chosen among the different methods of data collection and information was collected through the use of articles and books on legal research and legal writing. The instrument used was note taking another instruments were not used due the specificity of the topic. The purpose of the present study is to recognize and make clear the nature and history of environmental problems on commercial property and business, craft and trade right from the viewpoint of law and jurisprudence. Also, legal and jurisprudential opinions were raised in dealing with this phenomenon in the landlord and tenant law in 1998as well as the lawfulness and unlawfulness of the issue.

First discussion

What is the nature of commercial property? Is it a property or right, Corporeal or incorporeal Movable or immovable? In today's trade, Businessman's investment and business activity and the type of work he does is more important than his moral character. Customers may not know a trade's owner, but are willing to buy what they need from their products due to trusting the institution and its activities. So having permanent customers for the merchant depends on his capital, business goods, and types of instruments, while civil customers, like those who go to a doctorial lawyer, depend on his reputation and good personal conduct. Based on the above fact, a thought has been created in France that at radar must consider customers' right as a financial right. These rights not apart from the win situation and combined with trader's asset, business name, business license and priority indenting, and even the store's decoration, so it can be defined as the right on permanent customers and firm's investment. This right may be translated in in Persian as "trade's source", and has various elements. Some of these elements are material (e.g. commercial products and tools) and some are non-material (such as priority indenting, trade name, and trademarks), but the major element is keeping the permanent customers of the trader and as a result the right that the businessman has gained due to his work and the earned trust.

On the other hand, since material and non-material properties and financial rights cannot be divided into moveable and non-moveable, and the recognition of the sleights is possible only by their topic, if the topic is the right of "movable property", the right is called "movable incidental", and if the topic is the right of "immovable property", the right is called "immovable incidental". The topic is commercial property or the right of permanent customers of a job or activity. Human action cannot

be considered as immovable property and therefore in France's law, trade's source or commercial property is considered as movable and con sequential property and to make (Roofeer 0.688(c)3). But the concept of commercial property or trade's source does not have such a vast meaning in Iran's law as its interpretation in France. Commercial property which is interpreted as business, craft and trade right in the law of landlord andtenantin1998 is represented in the law in 1356 with a little change as (the business or trade right, whereby the tenant has the right to possess the rent location prior to others. In the market convention, when it is said that a businessman has sold its commercial property, it means that he drained the store, and leave it to others. The concept does not include transfers of the businessman's capital and his business name. In general, commercial property is composed of different elements, some of which are movable and some immovable. For example, the money that a trader receives for his action and reputation is undoubtedly due to this moveable right, and the right the has on the rental location should be regarded as immovable. Therefore, the recognition of this mixed right cannot be easily done, and depends on which elements it is composed of and which element has a deep rooted and basic description.

Justice has not yet decided about this issue. It may be argued that the essential elements of the business and traderight business is keeping the merchant's customers, and therefore it is the right he has received due working and his acquired trust, on his integrity and achievement and other elements are functions and extensions of this basic right; as a result, the issue of commercial property is a movable immaterial property and the basic right should be consequently viewed as immovable.

According to Article 19 of the law of landlord and tenant relations in1977,especiallyNote 2,commercial property (business or trade right) is indivisible of an immovable property or the rent issue, is moveable only by leaving the rental place, and the tenant cannot transfer the place while staying in it. Also, according to Note 2 of Article 19, transferring the business, craft and trade right is possible only by setting up formal document. While we know that transferring movable property does not generally need an official document and these obligations exclusive to the transferor property (Articles, 22, 46, 48). Therefore, this possibility is strengthened that the lawmaker has considered commercial property as the rights and benefits of properties.

Before entering the main discussion, we primarily investigate the given definition son commercial property. Then, the definition of business, craft and trade right is investigated and the

real meaning of these two concepts and their relations with each other is made clear because the two concepts are close to each other and even some lawyers view them as one. However, by the establishment of the law of landlord and tenant relations in 1997 there is at least less doubt in this respect, from the legal perspective (Zaynab, 1990; 201).

Second discussion

The similarities and differences between commercial property and business, craft and trade right

As commercial property was first appeared in the market norm, the concept of commercial property was derived from the convention and its presence in the convention was the main reason for predicting it in the law. In the first part, the definition of commercial property is presented, in the second part we define business, craft and trade right, and in the third discussion we deal with the similarities and differences between them.

Section one: Definition of commercial property

1. Definition of the word “commercial property”

There are nearly similar definitions for the word “commercial property” in the dictionary, and there are some differences in some instances due to the similarity of the concept of commercial property and business, craft and trade right so that in the Moin dictionary we have the following meaning for commercial property: The right that tradesman and businessmen gain for a commercial place to be prioritize in renting the place and finding customers and so on. Such a definition is more compatible with the business, craft and trade right (Mobal, 2005). Dehkhoda dictionary has presented the definition of commercial property as follows: commercial property is what a tenant of a rented place receives for opening the place and is different from the rent and the tenant can sell it to the next person who rents the place (Dehkhoda, 1999). Nezam dictionary defines commercial property as the money that the tenant gives to the landlord beside the rent of a house or store, etc. at the beginning (Daiialeslam, 1984, 1984). Nezamolataba in his dictionary defines commercial property as the money that a house or store landlord receives beside the rent and is separate from it (Amid, 1982).

From the above definitions, it can be inferred that firstly the concept of commercial property can be lexically used both for residential and commercial places. Second, commercial property is the money paid to the landlord or the next tenant some sometimes the concept refers to the right gained for attracting customers for the place. Such a definition is more in line with the definition of business, craft and

trade right so it's the money which the first tenant pays to the next tenant or the landlord.

The revised concept of commercial property

Although the concept of commercial property was first appeared in the market norm, and the lawmaker was forced to predict it in the laws of the country, but the legal interpretation of commercial property has not always been the same as its market norm interpretation. Despite the fact that some changes have occurred in the law of commercial property, people still buy and sell commercial property based on the old routine, and only if face a problem or struggle, refer to the legal usage of it.

In this part, the author makes an attempt to present the definitions of lawyers and lawmakers, make clear the legal and expressive concept of commercial property to find out the extent the lawmaker has followed market convention in predicting commercial property. What is the definition of commercial property in the lawmaker's viewpoint that the criterion illegal relations is the legal meaning? In this regard, those who consider the legal aspect in their commercial relations are more successful. The author examines the definition of commercial property by investigating some expressive definitions to outline its principles so as to make clear the meaning of commercial property and realize the meaning of business, craft and trade right and the relations between these two concepts. Katuzian (1999) defines commercial property as “it is a privilege in which the tenant has the right to have superiority in renting a commercial place than others due to his activities in attracting customers” (p. 517). Langroodi proposes two terminologies for commercial property; 1. The money that the tenant receive from the next tenant due to attracting customers for that commercial place which is invisible and does not have any tax. 2. The money that a landlord receives from a tenant in a new commercial place beside the rent and has tax (Langroodi, 2002).

In the first definition, Langroodi considers commercial property as a privilege resulted from attracting customers while such a concept refers to business, craft and trade right which is different from commercial property. In the second definition, Langroodi has made a distinction between the two concepts.

Section II: business, craft and trade right

Business, craft and trade right as indicated from the words is due to the trader's activity and popularity. Although some lawyers consider the commercial property and business, craft and trade right as one (Yousefi & Zaynab, 1999, p. 201), most of them believe that the two categories are different

in meaning and concept. This will be made clear by providing the definition of the concept.

As mentioned, some lexicographers have considered business, craft and trade right opposed to commercial property. Commercial property was defined in Moin dictionary as the right that tradesman and businessmen gain for a commercial place to be prioritizing in renting the place and finding customers and so on. Such a definition is more compatible with the business, craft and trade right than commercial property. Business, craft and trade right is actually a privilege. Katuzian (1999) defines commercial property as "it is a privilege in which the tenant has the right to have superiority in renting a commercial place than others due to his activities in attracting customers. Priority in renting is a consequence of business, craft and trade right due to the activity and the attempt of the tenant in finding and attracting customers for a commercial place and he can conventionally have to priority in renting it according to the law of landlord and tenant relations in 1998.

The business, craft and trade right is also seen as the right which a tenant or the one who do financial job in the commercial place even if they are not traders (land property law for urban development enforcement 07/06/1960 and owner law and tenant approved in 1960). This is different from commercial property because commerciality and the presence of customers are not essential for commercial property. The business, craft and trade right depends on the benefits of the rented place. Suppressing the business, craft and trade right is not acceptable without suppressing the benefits of the rented commercial place.

Dehkhoda dictionary has presented the definition of commercial property as follows: commercial property is what a tenant of a rented place receives for opening the place and is different from the rent and the tenant can sell it to the next person who rents the place (Dehkhoda, 1999). Nezam dictionary defines commercial property as the money that the tenant gives to the landlord beside the rent of a house or store, etc. at the beginning (Daiiaeslam, 1975, 1985). Nezam olateba in his dictionary defines commercial property as the money that a house or store landlord receives beside the rent and is separate from it (Amid, 1983).

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trade right so it's the money which the first tenant pays to the next tenant or the landlord.

From what was discussed above, it can be inferred that the author believes that commercial property is different from business, craft and trade right and the presence of customers is an element of business, craft and trade right. Mousavi (1376) defines business, craft and trade right as "it is an obtained incremental financial right that the legislators consider for commercial activity and consequently its benefits if the license is transferred to others through a formal document" (p. 130).

Section III: The difference between commercial property and business, craft and trade right

In collecting the opinions of lawmakers and scholars, there are generally two opinions about the relationship of commercial property and business, craft and trade right. Some lawmakers have considered them as one while most lawmakers and jurists have made a distinction between them. Jurists view commercial property as lawful and business, craft and trade right as unlawful, but lawyers make a distinction between them as follows:

1. Commercial property exists from the beginning of renting when the construction of the commercial place is finished so that it is common that after finishing the construction of commercial places sentences like "the commercial property of this place is sold" while business, craft and trade right does not exist from the beginning and is incrementally made with the activity of the tenant.

2. Suppressing the business, craft and trade right is not acceptable at the beginning of renting a commercial place without suppressing the benefits of the rented commercial place while the landlord and the tenant can make an agreement to suppress the commercial property.

3. The basis of commercial property is paying the money at the beginning of the renting while the basis of the business, craft and trade right depends on the positive popularity and attracting customers by the trade.

4. Even if a commercial place is rented without paying the commercial property, the tenant might gain the business, craft and trade right after a while. The opposite is also correct which means that if someone rents a place for garage, then the business, craft and trade right is not considered for the tenant.

5. The amount of business, craft and trade right depends on the number of the customers for the commercial place while the amount of commercial property depends on the success and the position of the commercial place.

Establishing the law for landlord and tenant relation in 1998 and its prediction of commercial property instead of business, craft and trade right and

forbidding the paying of any other illegal money emphasized on the distinction between the two concepts.

At this stage, two points are investigated to clarify the subject; the issue of commercial property between the landlord and the tenant and second investigate it from different perspectives.

Paying the commercial property between the landlord and the tenant

In this section, the proposed opinions regarding the payable commercial property between the landlord and the tenant are assessed.

Paying the commercial property as stipulation

Some experts believe that the main reason that the tenant pays money to the landlord is stipulation. On the other hand, the landlord somehow forces the commercial property as stipulation when make a rent contract. This condition can have different forms as follows:

1. Commercial property for giving subrogation to the tenant

Nouri Hamedani (1380) justify paying money for commercial property as the landlord gives subrogation to the tenant while making a rent contract that when the renting period is finished the landlord returns the money to the tenant and in such a condition the tenant gives an agreed amount of money as "peace" or "Gratuitous gift". This money is not commonly similar to commercial property in the public and is just considered for the lawfulness of paying the money.

2. Giving privilege to the tenant

Big deli (1998) believes that a tenant pays the commercial property as an amount of money beside the rent because he receives some privileges at the end of the renting period. For instance, the tenant rents the place to another person or the landlord loses the right to discharge the place since he has received the commercial property or the landlord can give this privilege to another tenant by receiving the commercial property from him.

However, the common concept of commercial property in public convention is not in line with such an interpretation. Maybe some people accept such conditions conventionally by paying the commercial property, but usually the landlord and the tenant are not seeking this. Paying money as commercial property may bring about some privileges some we cannot associate the conventional paying of the commercial property to this opinion, but in the law for landlord and tenant relations in 1376 in notes 7 and 8, such an opinion is taken from the jurisprudent viewpoint.

3. Commercial property for giving priority

This condition gives the tenant priority in renting the commercial place than others due to

paying the commercial property. In other words, if the tenant is inclined to continue renting the place, the landlord has to extend the renting period by receiving the commercial property so that the tenant has priority to others in renting the place. This believe has its origins in the previous law of business, craft and trade right since one of the outcomes of business, craft and trade right is priority right for the tenant while the commercial property common in the society is different from this perspective since commercial property has a more common meaning than priority right and paying it on time has not similarity with commercial property and the discussed theory.

4. Commercial property as debt

Some scholars believe that the money paid as commercial property is a debt paid from the tenant to the landlord. The landlord considers the condition while stipulating that the tenant gives money to the landlord as debt monthly beside the rent and does not have the right for its return until the end of the renting period. The money is kept by the landlord until the end of the renting period and the landlord should return it when the tenant asks for it. In this regard, the landlord is not the owner of the money and should return it at the end and also the tenant cannot ask for more amount of money than he has paid the commercial property.

Investigating the lawfulness of commercial property from the viewpoint of Imam jurists

There has usually been disagreement over the religious lawfulness of commercial property from the beginning of its emergence and this disagreement increased after the Islamic revolution. Some changes in the law are due to these disagreements.

As discussed earlier, commercial property is different from business, craft and trade right and the reasons for this difference and the lawfulness of commercial property and the unlawfulness of business, craft and trade right was mentioned from the perspective of jurists. Now, the opinions of some jurists are investigated to clarify the lawfulness basis of commercial property. Old jurist did not give any opinion regarding commercial property due to the fact that it was new. However, nowadays some jurists have presented their ideas in this respect and the lawmaker has also followed the common opinion to make legal changes. Here, some of these opinions by famous jurists are presented:

Note 1: Imam Khomeini proposes some issues regarding commercial property:

a. Renting a place whether it is a store or a house or a part of them does not give any right to the tenant so that the landlord cannot deprive the tenant from renting the commercial place. Also, if the tenant works for a long time in the rent place and acquire a

good reputation, this does not provide any right for him so that when the renting period is finished, the tenant has to leave the place and return it to the landlord. If the tenant stays in the renting place without the consent of the landlord, the tenant is guilty and should sponsor any damages to the place. Imam Khomeini has not made a distinction between the residential and commercial places in this condition and by finishing the renting time, the tenant should discharge.

b. If the tenant rents the commercial place to another person, the renting contract is unacceptable and the rent is unlawful so in such a condition receiving commercial property is unlawful and the tenant cannot receive any money as commercial property from the landlord.

Discussions

The law of landlord and tenant of were passed by the parliament in 1998 with the goal of integrating the laws of landlord and tenant. This law forbade the business, craft and trade right and used the commercial property instead. Due to the disagreements among lawmakers and legal authorities regarding the whether the laws of landlord and tenant in the law of 1978 about business, craft and trade right are applicable after the law of landlord and tenant of was passed in 1998. Finally, the [Expediency Discernment Council](#) decided that the business, craft and trade right is applicable based on the law passed in 1991. In the law of landlord and tenant passed in 1998, the commercial property was not defined and also the business, craft and trade right was not mentioned. This law takes two different positions in facing the commercial property and the business, craft and trade right but does not include the business, craft and trade right and is just dealing with the business, craft and trade right in the law of 1356 which is still influential today. Commercial property refers to money in the law of landlord and tenant and is considered as a property and has to be value to be transferred and exchanged.

Commercial property is exclusive to commercial places and infomercial places do not have commercial property the criterion to identify whether a property is commercial or not is its use. Most jurists only accept commercial property as lawful and do not accept the business, craft and trade

right if it is not the same as commercial property when business, craft and trade right refers to the right a tenant receives due to working according to the law of landlord and tenant passed in 1968. Commercial property has been accepted by most jurists and is both important for the religion and the needs of the society.

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