

A comparative study of secondary attorneyship in Jurisprudence and Rights of Iran

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Abstract: Every person having legal capacity, it is able to applied all their rights in person. But in many cases, people for various reasons, the exercise of this authority, and to avoid non-financial part of law such as marriage, divorce and especially the seizure of property law including the transfer of the property or its management, on behalf of other agencies and layers. In fact, the action performed by the agent, but the rights of the proprietor, and he appears to favor. Legal framework for this process, in accordance with the contract law of contracts has certain religious and civil law there. Attorney Rights Institutions permission, permission for him on behalf of another (attorney) to perform this action Hqvqy.br Foundation, as a lawyer, and the substitution of another person's right to a lawyer, the lawyer is mediated by attorney client. After substitution Ghyrasvla the immediate left of attorney unless he wants to be his downfall. Appointed legal Attorney has two components, one substitution to another, and another, the immediate resignation of the attorney. But after the attorney-mediated primarily vested with the same rights and immediate needs of attorney. In other words, the deputy attorney lawyer first.

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Introduction

Social reform, increased personal engagement, rapid progress and economic growth of Industrial societies led to get intricate rules and regulations over the relationships of individuals and legal community, and this is one of factors that reveals need of an attorney in society. Beautiful interpretation of some legal, duty lawyer "is not only defending of the rights of his client, But also participating in social justice, encouraging the community for the respect to the law and helping to provide the background of the healthy environment, going far from evil pollutants and flourishing opportunities and these are his uncritical duties. " attorneyship is certain contracts that its achievement, not merely subjected to the agreement of the parties of the contract but also its proving to be true requires both basic transactions and legal conditions.

Statement of Problem and Importance of topic

By signing a contract of attorneyship, lawyer and client against one another have rights, duty of a legal relationship, their mutual obligations and responsibilities.. Obviously the legal delimitation of responsibilities is effective in preventing from probable conflicts of parties of the contract and in reducing the amount of the court files. Obligations of lawyer against client are arisen from signing the contract directly or indirectly. It may that its source is agreement between a lawyer and client under the conditions and obligations of the contract, however, it is necessary to comply obligations of contract that directly due to the source of contract, arisen from the

nature of the contract and the mere realization of the contract without the need to reforming, they will be responsibilities for lawyer

Secondary attorneyship

This is a contract that client can select a person as a lawyer and options to lawyer for his client. Civil law and civil procedure law, despite the fact that defending of another person for the lawyer is contrary to the principle, but to issue an order to going out of sentence. The Civil Code stipulates (attorney for a work cannot empower to another person like that work unless expressly or by implication Contexts, a lawyer with right of the substitution). The civil law of Iran bases on this issue and effectiveness of Imami jurists. in Article 672 of the Civil Code, this principle is based Mnt of the lawyer ane the lawyer can select a replacement for himself.

Review of Literature

Theses and articles have been written on this subject:

- Articles (discussion of the right of substitution of non-representation) by Mohammad Sadiq ayatollah. Articles (attorney with rights of substitution of powers of attorney) by Javad Motamedi

- Articles (law further comparative study of law, the rights of Iran and England) by M. Ayzanlv- Mahsa Madani

- The book (secondary attorney) by mhsa Madani New aspects of the research and innovation:

This research seeks to study it for a secondary attorney that has an innovative aspect because various studies have attempted to examine this issue in Iran's

rights. so This study hasn't a history of book and an article with an independent indication with the similarity of content so in its new and innovative aspect is no doubt.

The specific objectives of this research

Based on the research topic and the extent of it because of the comparative subject, this study has the following objectives

The main objective:

1. Verifying and comparing the secondary attorney in jurisprudence and Iran's right

Secondary objectives:

1.To check the power of lawyers in secondary attorney

2. To determine the position of the second lawyer and effects of it in the secondary attorney

3. To check license of substitution to the other

Research questions:

1. What is the legal nature of secondary attorney?

2. What is the role of lawyer in secondary attorney?

3. Where is the position of the second lawyer in the secondary attorney?

The research hypotheses

1. The legal secondary attorney is mutual whereby a client can take his personal attorney and give him options that selects an attorney for the client

2. In jurisprudence, there is no right to a lawyer for lawyer, and in an expressed or implied permission as an exception, there is such right to an attorney.

3. the position of the second attorney in secondary attorney, the lawyer is the client because the attorney is on the behalf of client.so The contract of the secondary attorney for the client is located.

Method:

In this research is used descriptive - analytical method that by the mean of it analyzes the expression of Islamic principles in the prevention of crime. And also in collecting subjects were used specialized books and papers published in scientific journals.

Organization of research:

This thesis examined the issue of the secondary attorney in jurisprudence and laws. It was collected at the four chapters that the first chapter is the attorney of the general contract.

In the second chapter refers to the substitution to the other and in the third chapter is discussed to effects of substitution of view of jurisprudence and law, in the last chapter has been granted to attorney.

Attorney in substitution

First Speech: The concept of substitution in attorney

Substitution means attorney to another. According to Article 656 (BC) "Attorney is a contract whereby one party replaces the other party to do his

deputy." Word substitution of materials 672 and 673 has been used to mean the substitution of non-lawyer to give power of attorney to another. Substitution to the other can be said that granting substitution to the lawyer for the other person for doing attorney.

Second discourse: the nature of substitution

In explaining the nature of the substitution must be said that in many cases people do not want or can not personally involved in the transaction and so give it to another person. an attorney has the only role of a mediator in the transaction and he personally accepts no commitment in the transaction, and makes the obligations and the effects of contract for a noble person or client. The secondary attorney is a side-contract according to the attorney's primary. Because the same let that made by the early attorney with accepting the first lawyer gets easy, And the second lawyer because of the early let can occupy, So effects of all the legal actions taken by the second lawyer victimize client. Therefore we can say that substitution of secondary attorney is nothing except Astnab^o in occupation.

The substitution to the other

With regard to the concept of effects and features of the substitution can be identified two basic types:

Voluntary basis is created by the permission and consent of the client and the legal basis that is based on certain circumstances and ultimately the client's permission prescribes the substitution to the other.

First paragraph: Based on client's will

Therefore our meaning of this basis in here is the origin of the right of substitution, which can be a permission or authorization Although these two words, sometimes in public and even in laws and jurisprudence are applied to a concept, but in fact there is no difference between the two. Permission, consent of the person who his consent in law considered as the condition of the impact of the contract or other unilateral obligations, provided that such consent issued after the issuance of the contract or unilateral obligations. The second part of Article 247 also points out, but the "permission", is consent of the person to do an act or foreign possessions.

So whenever consent is before the occupation, and such permission is like after the seizure.

The concept of submission of attorney:

The submission in the word means governing or authority of someone who entrust a duty to a person and it means option against force. The latter meaning is observer of the philosophical concept.

The concept of submission of attorney in laws:

Some believe that submission has been applied in this meaning:

1. Grant of job and post like submission of judgeship

2. The freedom of the human will in action and omission of action

3. In the family law is equal with the omission of mentioning to marriage portion, or condition of the lack of marriage portion, or leave the amount of marriage portion to the couples opinion or third person

The concept of submission of attorney in Imami jurisprudence:

In jurists mainly when absolute submission uses, marriage portion can be inferred

Some have used the meaning of attorney of submission to other of course apparently consider the literal meaning of submission, not the subject of our discussion. However, absolutely the submission includes this meaning. Imami jurists in discussion of submission appointed the divorce to wife instead of submission. And they used more the word Tkhyr in their books that have discussed.

The nature of the submission of attorney

With regard to the definition and the institution of delegated power of attorney, we can now better understand the nature of the legal entity. For the concept proposed by submission of attorney and what as a clear example of legal entity known in our law matches exactly with the transfer of contract. In fact, the nature of the contract that is signed between the first and second lawyer, isn't attorney, but also transfer of agreement to transfer of all its rights and obligations are transferred to another person. And the transferee will replace the transmitter in the agreement. In species that the rights arising from the contract of transferee will be removed completely from the contractual relationship. Such that the transfer of the lease that the new landlord and the tenant will be faced with it and the old tenant of the lease relationship is removed. the definition of the transfer of contract is that a transfer of contract the case in which the third party is the successor of one of the parties to the contract. In other words, in the transfer of agreement, the goal is contract position of one of the parties with all rights and obligations to be transferred to a third party. For example, the owner commits that he sells their property to the other party of the contract, the property is transferred to another and makes him as the successor.

The vicarial definition

The term surrogate is not defined in our laws. Except about the bankrupt administrator (Article 418 Q.t) and insolvent debtors isn't applied. But according to the Spirit of material of the representation and inheritance in definition of the vertical position can be said that deputy has not participated directly or through its representative in compromise. But as a result of the all transfer with the part of the person's assets and assumed as successor of contract and benefit from its implementation.

The Special deputy

In particular definition of surrogate often means a person who the property entitled him. Thus, compared to the same buyer to Mthb Mvhvb sales and special deputy are clerk and generous. But this description and the definition for the expression of specific parties or surrogate isn't enough in infection of the expressive effects of contracts. So, in the definition of surrogate can be said, "people due to the transfer of certain property or rights, or in the case of effects of contracts, transmitter already signed the right or the right that transferred to another, in the transmission " "Based on this basis, the buyer is not about the sales, but it is about the effects of contracts that the seller signed before sales with others, he is his special deputy.

The result:

A large part of the rules and regulations of every legal system is dedicated to contracts and agreements, because many of life relationship in society are required to contract. But the human need is not ended in there. But the implementation of the commitments and obligations arisen from these contracts and contract provisions require to rules that the implementation of these commitments and creatives of the contracts is unsettled and contract is not lifeless body.

Social reform, increased personal engagement, rapid progress and economic growth of Industrial societies led to get intricate rules and regulations over the relationships of individuals and legal community, and this is one of factors that reveals need of an attorney in society.

With a look to the authors view of civil rights that are mentioned in the text of the thesis, We find that they arise in contract of law, and know a lawyer as a commitment for attorney, Obviously it is essential for contract of attorney i whereby one party replaces the other party to do something And by the time he accepts his behalf, which promises to be a lawyer. To do something that has been the subject of attorney, Not only the lawyer is committed to empower of attorney but he required to comply in performing the best interests of the client's own practice, It also applies in the case of a second lawyer and he should take into account the best interests of the client. According to the authors definition of a attorney that in detail of the thesis stated submission to the other means granting of authority to the other by the lawyer, But as was mentioned, the famous view in the background, attorney is granting behalf and have an allow in the occupation, and they should be paraphrased that behalf means vertical position instead of someone does something. So we can say when any lawyer carries out his obligations to the client (to the proxy) on behalf of someone else to do it Substitution

to the other will occur. It should also be noted that the substitution can be on let and permission from the client. The study of different religious views can be concluded that in jurist is no right of substitution to a lawyer, and there is the express or implied permission as an exception to the right to a lawyer. Jurists have mainly two methods about the scope of attorney A blatant manner through the chapters on legal cases that substitution is allowed in them Another group, the ability to express rules for expressing instances of substitution and then with regard to the instances is stated. It must be said that the difference between the two methods is in terms of form. The result can be stated that in Iran's law and Islamic jurisprudence, the area of substitution isn't limited to legal actions and those actions that are in terms of capability of substitution. It should further stated that the nature of the secondary attorney (substitution) is a contract of attorney, but the attorney that is a kind of its subsidiaries is subject to contract between attorney and client. And it doesn't eliminate the primary lawyer of the contractual relationship and its purpose is granting the behalf to a third party for power of attorney. In Iranian law and jurisprudence in the absence of the substitution principle, there requires the express or implied permission of the client. On the other hand, both in law and jurisprudence in the absolute assumption of command substitution, if the original client, while granting the right of substitution, doesn't give the authority to determine fee to the first lawyer The second attorney cannot take determined fee from the main client. But since secondary attorney is granting behalf, the main client can dismiss the second lawyer As well as in Iran's rights, the second lawyer cannot empower the third person, unless in the primary power of attorney stated conditions such as the substitution that repeatedly though it is stipulated. In Iran's rights if non-lawyer gives authority to attorney of law with the authorities inserted in Article 35 and the primary power of attorney to the authorities isnt mentioned. the court is obliged to accept the legal attorney because most of the powers that contained in written material based the common sentence is substitution, such as peace, reconciliation and arbitration as the first lawyer is not capable of substitution Unless it stipulated in the original power of attorney. It is also very important that unlike the substitution of attorney appointed if the primary

attorney is irremovable, Second attorney for transfer of the contractual position will be irremovable to first lawyer, In substitution to the other, a lawyer who has substitution of attorney, and only is a lawyer in substitution, not to take the removal from office, and this action needs to be clarified. In about the prying attorney must also be said if the first lawyer is given to him without the substitution of attorney he gives permission to another And the second lawyer causes damages both the first and second attorney are responsible against losses that were imported client And it can be said that the responsibility of the first lawyer is the contract of attorney and the second attorney's responsibility is inevitable.

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