

Inseparable Claims and Its Legal Effects

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Abstract: A claim that is under investigation in law court, May be indivisible claim. An indivisible claim is an exception of the real of divisibility of claims. It's a claim that due to the single reason and various complainants and called or because of comprehension, veness of the claim request can not disport into different sections. indivisible claims and sentences have special features and don't let claim and sentence to be divided into different parts. in these claims, the success of one group of called and defeat of others is not possible. and all of them either win or condemn. For example, claim of invalidation of official document, claim of proving parentage, and case of marriage dissolution can be mentioned. Legal consequences of indivisible claim on suppression of judgment is that, when the claim is in divisible, judgment will be generally suppressed, and it must not be heard in the restoration of claim of some called. Also, complainant in this case should generally quit his claim. Lastly, one of definite principles in civil procedure is applying the sentence to someone who hasn't been present in steps or the section that lead to the issuance of judgment (sentence), this applying only take place in a endive, sable claim That has led to issuance of judgment.

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The problem statement

The purpose of law science is justice fulfillment, but any branch of law science has its own Special purpose. Special purpose of Civil Procedure is end of hostility. Civil Procedure Law as a vital crossing from the mind to act, including the rules and regulations that the courts in addressing grievances are obliged to obey them. Hence, all proceedings should be run under this article. However, according to overcome might be assumed that complainant always is winner and the defendant is loser, but the result is not always true. Code of Civil Procedure was enacting to protect the rights of quarrel people and play an important role in justice implementation and prevent abuse of both sides. The legislator empowered right owner when a danger threatened him so that if it is not maintained immediately, its compensation is impossible or difficult in the future. By resorting to these provisions, he/she prevent the violation of his/her right. In this paper, inseparable claims has been analyzed. In this paper, we tried to analyze inseparable claims and its legal consequences by available sources.

Research background

Some jurisprudent presented definitions of those quarrel in school pamphlets and their books. Social need for the establishment of social justice has led to that the codification and ratification of law related to legal proceedings be among the first social laws. In a society which conflict of ideas about claim rights discussed in, justice and judgment is inevitable and very important issues that has a high position in Islamic law and substantive law. The importance of this position cause that Muslim scholars, both Shia

and Sunni, wrote about this a lot. Also, in substantive law, legislator devoted a lot of efforts to develop consistent rules on the subject; however, in some cases, his efforts led not to his considered conclusion (Mohajeri, civil procedure, 2, 85).

Inseparable claims definition and legal term

Conflicts of persons' interest together is available tool for social and legal relations among members of the society and interference of claims multiplicity around them is one of its outcomes. If legal and social requirements were not considered, issuance of conflicting opinions, waste of the parties' time and money and the loss of prestige of judiciary are the consequences. In different cases of the Civil Procedure Code, lawmaker states inseparable claim or sentence including articles 104, 298, 308, 359, 404 and 425 that can be investigate in this regard.

Types of inseparable claims

Being inseparable resulting from the nature of objects like two persons' sentence to delivery of live animals.

Being inseparable resulting from wisdom like the example that was provide about through the channel right and passing right.

The legal effects of inseparable claims

The purpose of preference and court procedure is demand the right in civil cases and impose penalties on offenders in criminal matters. The history of the right returns to the Anglo-Saxon legal observance that its origin reaches to the Magna Carta in England. Of course, the principle of the right coincident with temperament and human nature and is based on human logic, the main sources of international humanitarian

law also insists on the need to respect of the right. At the national levels, systems of most countries including the right to fair trial which reflected in the constitution and ordinary laws and other legal provisions. Establishment and objective realization of it also is one of the today's human obsession. In order to achieve this aim, a series of rules and procedures appointed that claimer and judge and other judicial officials have been determined by the legislature act accordingly. Failure to comply with formalities and procedures or ignorant of its provisions, it may cause loss of the right to convert. The correct claim to demand right and correct defend against vicious claim, is not possible without dominating the rules and procedures of the litigation. So, in order to achieve this aim, a series of rules and procedures have been determined by the legislature that claimer or judges and other judicial officials act accordingly.

The impact on the competence

However, it must be said, Code of Civil Procedure, although responsible for organizing and coordinating civil procedures, but the organizing should be such that it is not contrast with the philosophy of this field of law. Code of Civil Procedure is a science that plays a role in order to guaranteeing and protecting of the right that created under the substantive law. Importance and benefits of inseparable claim including saving time and money, avoid issuing conflict opinions by the courts and are dealt with in a fair trial. Separate proceedings of inseparable claims may lead to adverse pronouncement and parties deal with many problems and also disrupt public peace. Observe local and inherent rules on inseparable claims is also necessary.

The impact on the legal proceedings

One of the most important tasks of governments is to resolve the animosity among the community individuals to establish order and to develop justice. The courts are the most important manifestation of this duty. In this topic, three statements have been predicted. In the first statement, combining claims and declared the proceedings have ended were considered. A very important point is that some of the legal establishment of civil procedure such as extradition are not applicable in inseparable claims.

Aggregation of claims

Combined proceedings are against the principle; and in order to proper inquest and abstain from the different votes and fundamentally it is for an exceptional inquest. Aggregation of claims is an act that the court undertakes it, in any way, after the preference of inseparable claims and if the conditions of the law is available. Inquiring inseparable claims, in addition to cause that the parties of claim present their case to the competent authority correctly and also observe this issue causes that disagreement and

prohibit disunity of the judgment and misjudgment and help the judge and the justice to distinguish right from the false. Regarding to commanding of the imperative of the rules of civil procedure if the two claims are inseparable, they must be addressed together if the unit is connected or origin lies in the law expressly or judge shall have come.

- Announce the termination of proceedings

When the Court hear the parties' explanation and reflected a summary of explanation in the records and the reasons was dealt and it was clear to the court and further action was not needed, the termination of proceedings was announced. After the end of the court announced, hearing any oral or written statements will not be accepted from the parties. If after the announcement the termination of proceedings, enactment was presented and documents to be attached to the case without influence and basically, after the termination of the court, just it has one way and it is issuing judgment; the last part of article 134 A. D. M enjoin if the case has been assigned inseparable and only part of it is appropriate for sentence. Court proceedings can be attributed to the termination of the court and other than the investigation is continuing in order to that in some cases, when if demand terminated about a part and need to be further investigated, the court can issue a sentence for that part of the judgment and continue to inquiring for the rest of the case.

- Detention of proceedings

Detention means "stop of moving" and detention of proceedings means to stop moving. In detention of proceedings, die or stone, or decline of the influence of a party in the proceedings than others, and in some cases have no effect on others, in dividing of assets in term of that the action of division need to act that putting all partners except now the capacity is not feasible, proceedings stopped generally and the claim to the inheritance that the claims are separable, death or stone or deterioration of one of the parties did not at the hearing and the hearing of others than others continues. The purpose of the detention of proceedings is that the trial court proceedings, according to the causes is stopped, after removing the cause or reason, to flow again. It is obvious that the detention of proceedings is only applicable to cases that occur before the end of his trial and take place after detention.

Deterioration of proceedings

The means of deterioration or lack of proceedings are cases that court are exempted from sentence issuing and proceedings was detent. In fact, in cases which the directions of law and sentencing judge is not required to intervene to resolve the dispute, proceedings was faded.

- Claim extradition

Problem: In the case of multiple defendants, if discussion of parties is terminated and some of the defendants, consented to extradition requests and some do not, is it possible to claim a refund exists or not? It seems that the resolution must analysis claims, and claims that this is not this ability, that is the end of difference. The first case, there is no obstacle to the extradition proceedings against the accordance defendants. For example, in the case of a demand for payment promissory note, if committed speculation are four people, though liability partnership, but they satisfaction after the talks, extradition readily behavior. Analysis of the lawsuit prohibit the enquiring but what about the claim does not separable, it seems to be no question restoration. For example, in the case with the condominium easement is owned by mutual right, that belong to four people, in this case it is clear that sentence issuing based to announce of easement to one of the defendants, it must effect on others.

Relinquish of claim

With the issuance of the claim and issue the sense of decays, the claim in the specific meaning became decline. Decline of statement due to general relinquish of claim, if need be issued the demand will be established in this regard, and if so is demand written or oral statements that could mean the claims extradition and whether extradition proceedings be interpreted in the narrow sense, claim extradition court could not, in the proper sense be considered at least should he want to explain.

Strategies to address the inseparable default judgment

Default judgment is inseparable protestation and appeal; if the pleadings inseparable and indivisible, and to some person sentenced in absentia to some, it may be next happened convicted and sentenced protestation against the absent present, it did appeal. In that case a hearing should be managed in conjunction with inseparable and indivisible parts of a quarrel, conflict does not occur. The judgment on appeal, the Court of First Instance must reject the argument issue dispute protestation. (B) the delay handle the appeal: On the basis of this strategy is to appeal to the Court of Appeal should be addressed to achieve results in cross-protestation to delay the proceedings. This delay means that the appeal is final and as a result of protestation verdict may be appealed. If convicted plurality of peace, as some of them protestation and sentence following the termination of the proceedings, including those who have left will not be protestation. Also, if a plurality of sentenced in absentia sentence, if convicted on only some of them and the ruling party's protestation is terminated, the new rate will be non-protest. For example, if you remove the default

judgment duress or expropriation of the property is issued against two people and only one of them is terminated protestation and sentence in absentia on stage, fixed a duress or expropriation against the guilty verdict against the protestation not absent will remain valid and will only run against him and this person cannot use an ordinance issued in favor of protestation. At the same time, the material is an important exception to the rule is entered: "... unless the decision is not separable.

- Impact on rehearing

The possibility rehearing take place of the issued ruling sentence as a result of protestation to those who are subject, by the force of that, firstly it obtained from the sentence content, and secondly if they consider the judgment is against them, they appeal to it.

Protestation person who is not present at this hearing, since the extension works in this section is subject to a sentence, if the sentence is against him, he appealed for it, the right to appeal default from the initial judgment and if we believe you will fall in the right text and here there is no such a statement, we must accept the time for appealing of the sentence begins from the date of second sentence, although the conviction is inevitable.

1. The impact of these claims on appealing

The appeal is a complaint way with the unique nature. In the appealing there is no sense of real judgment. Inquiring an appeal "is to recognize the compliance or non-compliance of demanded judgment with Islamic rules and regulations about the appeal also wrote the same rules and regulations regarding the exceptional appeal that the composition of articles 308 and 359 respectively, " the appealing judgment of Supreme Court cannot be used for nonparty of appealing, unless the cases in which the mentioned judgment is not separation that in this case, it will be extended, compare to the other persons entitled to appealing judgment who have not appealed and the appeal, " So appealed judgment has a partial effect.

8-2-2. the impact of these claims on the restitution of justice

This kind of inquiry so called diversion way that the reason is due to the possibility of deviation reference from your previous decision because of wrong. The term can be interpreted to mean "go back to hearing". The origin of these practices should be searched in French law that turn back to the "Suggest mistake". In the Middle Ages, "suggests mistake" as a way of protesting against the provisions of parliament was exceptional but, by virtue of 1667 agreement, it was abrogated. Then in France as "politely demand" were common and finally in this the new law of civil procedure in this country, predicted under the retrial. However, as they have mentioned, in modern law, the tendency is that instead of accepting a retrial

permissibly, the possibility of appeal be provided (Karimi, 180 181). The retrial in word meaning is the combination of the two words "restoration" and "justice". Restore is the infinitive of verbs and the root of the "recurrence" means restoring, restore and re-do the work.

The impact of these claims on the appeal of third party

Philosophy of the prediction of wonderful ways of complaints prevent sentences and issue of incorrect judgment and as a result it prohibits violation of individual rights. Often the person who may suffer loss by the issued sentence, he/she is one of the claim parties, but sometimes third parties may have suffered from this ruling. It is clear that the lawmaker should predict a strategy for the rights of these individuals. This has caused our legislators as well as many countries the appeal of third-party is in favor of the aggrieved parties that provide in the proceedings leading up to the parties who an objector involved as the claimer. The reason that the way place among other ways is considered due to exposure to ultra objection that can be relativity principle of effects than those who have participated in the proceedings related or legal successors and those who acted on behalf of their parties.

Conclusion

Initiative of inseparable claim was done by the former Code of Civil Procedure Act in 1939 and the new Cod of civil procedure reiterated the dispute resolution of inseparable claim from the former law. Demand as the cornerstone of claim in most cases is separable, but in rare cases that are inseparable. Separation of claim is against the principle and that is exceptional under the principle of claims separation. Also, handle the case of inseparable combination is exceptional and contrary to the principle of separation in which the case is not separable.

Inseparable claims and judgments have special feature which prevent to divide components and parts of quarrel and components of the claim and sentences in term of subject matter and the parties are so that they are not separable. If the claim is inseparable and indivisible, the court cannot confirm the termination of the proceedings for a part. Also, the names of all

defendants, in this case, should be mentioned in the petition. If the claim and demands are not separable, proceedings will be banned in general. General relinquishment can also be acted to a part of the claim and because of numerous complainant and (or) defendants, it can be taken against them unless the claim was inseparable.

One of the concerns of lawmakers in the litigation process is its prolongation. The delay of inquest can be considered as the inherent effect of inseparable claims. Despite, the properties of legislator has not been authorized the misuse of this feature and has shown sensitivity against it; although sensitivity of legislators are appearance poorly. Legislator in Article 308 Q.J. write a principle that if the claim is inseparable, sentence extending to all parties of claim and the claim extending in the articles 359, 404, 438 and 420 Q.J. to other complaint of sentence.

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