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Original Article: Validation of Ordinary Documents in Real Estate Transactions

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ABSTRACT

In this article, the validity of ordinary documents was examined in real estate transactions. Real estate transactions without setting up an official document are important issues that happen a lot. Today, most transactions that are regulated regarding immovable property are normal, and the conflict between social realities or registration regulations, etc. has caused many problems in the society and especially in the courts of law. According to articles 46 and 47 of the document registration law, many transfers regarding real estate interests must be registered. Otherwise, according to article 48 of the said law, such documents will not be accepted in any of the departments and courts. Scholars and jurists have expressed different opinions regarding the validity of ordinary documents in immovable transactions, and there is still no fixed and uniform judicial procedure between the courts. However, it seems that the courts have reached a consensus in some cases and adopted almost a fixed procedure. The interpretation of articles 46, 47, and 48 of the Real Estate Registration Law by lawyers and courts does not have the same unity, and on the other hand, the practice of courts and judges' interpretation of these articles are not the same and there are different opinions in this field.

Introduction

On the one hand, the registration law clearly states that: "A document that must be registered according to the above articles and not registered will not be accepted in any of the offices and courts." (article 48 of the Registration Law) and on the other hand, according to the interpretation of this article and articles 46 and 47 of the Registration Law, the courts actually give value and validity to the normal documents that are about immovable property and accept them, while this material is contradictory.

The basic cause of this conflict goes back to the conflict that exists between rights and tangible and everyday realities. A law is passed without being exactly in line with the conditions and realities in the society, and since the judges are further bound by that law and are considered disobedient in case of refusal, they try to interpret that law in a way that is more in line with the material conditions and realities, and also the society is concrete that is where such conflicts arise (Eslami, 2018: 81). For example, we don't want to say that the duty of rights is pure obedience and we don't consider any constructive and dynamic role for it, because

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the dynamism and leading of rights in creating social changes not only does not contradict with taking into account the realities of society, but also he law that takes into account both if this component is approved, it will have a greater and better effect on social prosperity, and on the contrary, ignoring each of the two mentioned figures will lead to a corrupt sequence.

Plurality of lawsuits related to some normal documents

Another fact that exists in this regard is the problem of a large number of lawsuits related to ordinary documents regarding the transfer of immovable property, which at first seems to be due to the non-implementation of articles 47 and 48 of the Law on Registration and Licensing of Transactions, including houses and apartments and etc. is normal with the document. Because such documents are usually prepared by people who are not familiar with the law or under the influence of the illegal desires of the parties, in which case the regret of one of the parties provides the basis for discussion, litigation, and delaying the proceedings.

On the other hand, following the developments that took place in subject law after the revolution, opinions were expressed that the sale contract is a contract of consent and compliance with articles 46, 47, and 48 of the Registration Law is against Sharia. In this sense, the inquiry commission was asked whether these regulations have been repealed or not. The aforementioned commission gave the following answer:

In terms of non-existence and non-approval of a law that abrogates articles 46, 47, and 48 of the registration law. These regulations remain in force and are mandatory, and on the other hand, the guardian council has not commented on the illegitimacy of the mentioned articles (Eghbali, 2001: 23).

According to what was mentioned earlier; two questions are raised: One is which interpretation of the interpretations presented in articles 46, 47, and 48 of the Registration Law is in accordance with the reality, and the other is where to look for the solution to the conflict that was mentioned and also to prevent the lawsuits multiplicity. How should it be solved?

In connection with the first question, it seems that the opinion of those lawyers who believe that the sale contract is still a contract of consent and the provisions of the registration law did not include it in the category of formal contracts is compatible with reality, and it turns out that the courts have accepted the same opinion and they act on it, and they even use other evidences to prove the sale, and consider them to be positive for the lawsuit.

Regarding the second question, to prevent the increase of cases and the increase of judges, it is necessary that articles 47 and 48 of the document registration law, which are among the guarantee laws and not determinative laws. In the case of immovable property transactions, whether it is a house or an apartment, this opinion is not against the Sharia principles, because court judges say that they do not deal with normal documents related to immovable property transactions, not that they consider the sale contract outside the notary offices to be invalid (Eslami, 2018: 82).

Some others have stated that: "Even though today's new and civilized life considers it necessary to register real estate, and without this importance, many exchanges and granting of loans, guarantees and other things will not be possible. If legal institutions have not reached an acceptable minimum level of culture and legal information of the social members, this necessary content will lead to a factor in stabilizing and securing more inequalities or violating the rights of individuals" (Emami, 2008: 42).

In objection to this opinion, it can be stated that they believe that the courts should not accept only the normal document and they remain silent about other evidences, and therefore it follows that other evidences are admissible. For instance, confession or testimony, especially since the issue of confession and testimony is not prohibited by law. Therefore, it seems that his solution not

only does not solve the problem, but also adds problems to problems.

The fact is that what has caused chaos in the field of normal documents regarding immovable property is not the strict implementation of articles 47 and 48 of the Registration Law. What is more, as mentioned, these articles themselves are actually the source of this dispute and this is the reason why the judges are forced to provide an interpretation of these articles contrary to their appearance, concerning the daily needs and objective conditions of the society.

Therefore, being strict about the literal implementation of the above-mentioned articles does not solve the problem. On the other hand, the proposed solution may formally reduce the volume of lawsuits in this field, but in reality, it has not eliminated the substance of the dispute, and only the courts of justice will not deal with the issue, which may lead to the loss of people's trust in the judicial system. In any case, just as Masami has forced the legislator to amend the registration law, successive reforms require a more logical solution.

It seems that the solution to the problem is to try to increase the legal information of the people through appropriate means, for example, to control the affairs of real estate transactions companies, etc. has not been provided, we are forced to accept an interpretation of the mentioned articles that is more compatible with the objective conditions of the society, and as we have seen, the courts have done the same thing in practice.

Normal document problems in real estate transactions

A normal document does not have any specific rules and can only be written between two people. Another problem is that a document is prepared between two people and is not presented to a third party for many years, and if it is revealed after the death of one of the parties, it will not be able to be followed up. Likewise, normal documents cannot be tracked when they are not registered in a traceable system (such as the system of the real estate and document registration organization).

Therefore, these documents can be well protected for abuse such as these crimes:

Abuse of a normal document

In normal documents, due to the fact that it can be prepared by two people who are considered parties to the transaction, and only these two people are aware of its exact contents, and it is possible that no third party knows about that document. One of the parties to the transaction can change some provisions of the normal document by touching it. Now, proving this manipulation and violation of the other party is not easily possible and it will keep the courts busy (Khodabakhshi, 2017: 23).

Selling a property to several people

In this crime, the seller, by attending real estate agencies, repeatedly prepares a deed of sale (which is a normal type of document) for a property. In this crime, the seller may sell a residential unit to several people separately in one day, and the buyer, unaware of his other transactions, deposits millions of Tomans into the fake seller's account by receiving only one affidavit. When the transaction is done through a normal document, the buyer cannot find out about the property condition and will have to trust the seller. Similarly, buyers realize the issue when the work is over and they can't get anywhere (Khodabakhshi, 2017: 24).

Sale of other's property

In this crime, the perpetrator can easily sell another's property using a normal document without the owner's knowledge. In this case, property owners should worry that one day their property may be sold through a normal deed and they will have to spend time and money to get their rights back.

Buyers will be worried in the same way because they may buy a property and after some time the real owner of the property will be found and they will be involved in legal matters while the fake seller is no longer there.

This case, together with the above case, can have a great impact on the health of transactions and the psychological security of people to the extent that people cannot trust easily and do not even dare to enter and make a transaction (Eslami, 2018: 88).

The context of economic corruption and the escape of criminals (through the quick sale of property and non-identification by the government for follow-up)

Many big bank debtors as well as big fraudsters, who have stolen people's money under the guise of leasing companies, cooperative funds, etc., liquidate their properties through normal transfer and run away. Many economic criminals, who have illegal property, when they feel threatened, easily transfer their property through normal documents and run away. Also, due to the lack of a transparent system, these criminals can commit many of their crimes through normal documents, and the judicial and regulatory bodies cannot easily identify these crimes (Khodabakhshi, 2017: 25).

Eating land

Another very important crime that happens through normal documents is land grabbing. The statistics presented since 1995 indicate that land grabbing has been eliminated in the amount of 970 thousand billion Rials, which is equivalent to a quarter of the country's budget in that year. Experts believe that many land grabs in the country happen by relying on the validity of ordinary documents or affidavits because these documents are not registered in any system and the government does not have the power to monitor them.

Therefore, if a transaction is made with them, the regulatory bodies cannot find out about the matter and prevent it. This is the reason that profit-seeking people can easily build on national or agricultural lands and sell them at exorbitant prices; all this while these documents are valid before the courts and one of the main reasons for the spread of these documents among the people is this issue (Khodabakhshi, 2018: 102).

Money laundering

The crime of money laundering through normal documents will be one of the best ways to purify dirty money. Criminals can hide the source of their dirty money by buying people's property using a normal document without the surveillance and security institutions noticing easily (Khodabakhshi, 103).

Fraud

People who seek to defraud people can make transactions and buy money without paying for it, or sell money that has legal problems to someone without leaving a trace of them. After the transaction, finding the fraudster will become one of the challenges of the judicial system and the losers. (Khodabakhshi:103).

Tax evasion

Normal documents are one of the best ways to evade taxes. Perpetrators of tax evasion bypass the systems that can be monitored and use normal documents to bypass the tax laws and make it difficult to accurately identify their activities and calculate their taxes (Khodabakhshi, 103).

Among judicial cases, about twenty-five percent are directly or indirectly caused by ordinary documents. According to the opinion of the head of the Country's Real Estate Registration Organization, 103,000 unique cases related to the requirement to prepare an official document were filed in just one year, and there were 15,000 cases requiring the preparation of an official document in the case of cars.

In addition, the Judiciary Statistics and Technology Center announced in the latest information that in 2019, more than 200,000 cases were filed under the title of the requirement to prepare an official document in the country, which shows the prevalence of ordinary documents in the country (Shams, 2017: 55).

Prolongation of proceedings

Among the other problems of handling real estate claims is the delay of the proceedings due to the handling of the authenticity of normal documents. In many lawsuits, the normal document is in dispute and is referred to an expert, which will delay the proceedings in addition to increase the costs of the proceedings for the parties. Now, after the expert review, there is a possibility of objection, which adds to the delay of the proceedings (Khodabakhshi, 2018: 109).

Time costs and lack of judicial security

When normal documents with these problems continue to be prevalent, many people who have been deprived of their rights based on a legal loophole must spend a lot of money, including time and money, to restore their lost rights. Furthermore, the government and judicial system should pay enough attention to protecting people's property and providing psychological and judicial security of people so that people can do their transactions with peace of mind and confidence (Safaei, 2017: 42).

Conflicting transactions and third party claims

When a person sells a property to five people, for instance, the first and second may become aware after a while and file a lawsuit against each other, and the judicial system finds one party right after many investigations. After some times, a third person notices again and he also files a lawsuit. After the investigation and ruling in this case, other traders will also be found.

In addition to the above cases, it is possible that a third person is found, who shows a normal document showing his right to be in bad faith, and not only engages the judicial system in re-examination, but also deceives the court and becomes the owner of immovable property without right. Therefore, people should always expect that one day someone with a normal or fake document will seek to take possession of their property (Shams, 2017: 57).

Cancellation of an official document by a normal document

One of the thought-provoking procedures in the courts is the annulment of the official deed of immovable property due to the precedence of normal deed. This is while the government guarantees and supports the inviolability of official documents, but the current procedure of the courts is based on annulment of official documents contrary to ordinary documents with earlier dates. This causes even a person who has an official document to be worried about canceling it with an ordinary document (Khodabakhshi, 2018: 110).

Necessity and effects of official registration of real estate transactions

If normal documents are valid, these problems will still exist and the concept of ownership in Iranian law will remain shaky. To maintain the position of ownership and avoid the aforementioned problems, normal documents should be replaced by official documents. Similarly, with the official registration of real estate transactions, we will also witness these developments:

Judicial security

Those who officially register documents expect from the government that issued this document that the government will support them and provide them with judicial security, but if a person officially registers his transactions, from the day someone opposes him with a normal document filed a lawsuit against him and, in addition to cause trouble, even invalidated his official document (Khodabakhshi, 2018: 108).

Preventing crimes and filing court cases

In a desirable social and legal system, the crime prevention is always more important than criminal encounters after its occurrence, and the greater the importance and effects and consequences of committing a crime, the more important is the prevention of that crime.

Many crimes will be prevented when all real estate transactions are done with an official document. First, the parties' identity to the contract will be carefully checked and other information will be taken and recorded from them.

The second reason is that the details of the contract are registered by notary offices and, like normal documents, it is not possible to change any part of the document by the parties, and even in case of tampering with the document, refer to the official notary office where the document was prepared. He received a copy of the document. For the third reason, we can mention the possibility of identifying people through notary offices. One of the problems of ordinary documents for committing crimes such as money laundering, fraud, land grabbing, and tax evasion was mentioned.

The main problem in tracking the perpetrators of these crimes is the impossibility of identifying their activities and transactions as well as their identity information, but if these perpetrators have to conduct their real estate transactions through official documents and provide their identity information, they cannot easily commit a crime (Tabatabaei, 2017: 18).

In the crime of land grabbing, it is important to mention that currently, land grabbers have taken possession of government lands using normal documents, and in this way, they have incurred a lot of costs, both in the judicial system to deal with these documents and crimes, and in the implementation department.

They impose an order to demolish and remove possession to the government. If the land grabbers were forced to register official documents, the notary offices would be informed about the state of the land in terms of state ownership by inquiring with the country's real estate registration organization and prevent that crime from the very beginning by not preparing the document.

In addition, one of the important points that complement the crime prevention of land grabbing in government lands will be the implementation of the cadaster plan followed by the documenting of government lands (Shams, 2017: 58).

Courts becoming quiet and reducing the number of cases

As mentioned earlier, when a lawsuit is filed due to a normal document, there will be three claims of forgery, denial and doubt regarding it, and an expert is required to check the authenticity of the document, the time of document preparation and other matters. After the referral and opinion of the expert, there is a possibility of objection, in which case it will be referred again to the three-person expert panel, and in the same way, it can be referred to the five, seven, and nine-person panels. In addition to increase the costs (legal and expert fees), this will further lead to the delay of the legal proceedings. If all the documents are prepared officially (Shams, 2017: 58).

Transparency and taxation of empty houses

In recent years, real estate has become a capital good for some people, and by buying real estate, they have tried and not used it, in addition to cause inflammation in this area, they have made it more expensive. One of the plans of the Islamic Council to control this market is "Taking tax from empty houses", which is currently under consideration. One of the challenges of this plan is the method of identifying empty houses.It was mentioned before that in preparing a normal document; it is possible that no one other than the parties to the transaction will be informed of the existence of such a contract. In this case, how can you determine the number of empty houses?

Furthermore, people who want to escape from this so-called tax can easily circumvent the law by preparing a normal document for renting to another person, and even a person rents several houses in exchange for money, but if the requirement is an official document, it is easy to identify the empty houses and fake tenants. Of course, this point should be kept in mind that there is still a possibility of violation in this field through the national rental code, which there is

no opportunity to plan and review in this report (Tabatabai, 2017: 20).

Elimination of conflicting transactions

With the official registration of immovable transactions, the immovable property has a history, and due to the non-acceptance of normal documents, after that it is no longer possible to sell one property to several people, or to authenticate the parties to the transaction, the possibility of selling other property, along with the necessity of representation in the sale or transferring ownership of property in electronic property offices, the crime of selling property to others will also disappear (Tabatabai, 2017: 20).

Moving towards electronic government

One of the important goals in e-government is to use information and communication technologies in providing social, administrative, and economic services, especially in the public sector, to increase productivity and improve services and provide information to citizens, businessmen, and businesses.

By creating a system for registering the documents connecting the executive bodies that the property transfer is subject to inquiries from them, as well as the registration of judicial rulings issued by the courts, it has led to comprehensiveness in this field, and as a result, many services in this field will be performed with speed and accuracy; for example, various authorities used to make decisions about properties with a registered history, but did not reflect the result to the registration organization.

As a result, if an inquiry was made from the registration organization about that property, that decision was not mentioned and in practice, problems were created for the people. In this case, when conducting real estate transactions, with a single query from the system, information on real estate can be obtained, which will have a significant effect on the speed of work and reducing possible corruption (Shams, 2017: 79).

Preventing circumvention of the law

With normal documents, it is possible to transfer ownership through power of attorney. Now, an immovable property can pass through several hands through so-called normal documents. In this transfer, in addition to the previously mentioned risks, it was not possible to receive taxes (Shams, 2017: 79).

Plan to upgrade official documents

Following these problems and the Guardian Council's interpretation of articles 22, 46, 47, and 48 in 2016, the Islamic Council approved a plan entitled "Upgrading Official Documents" with thirteen articles with the goals of increasing judicial security, preventing disputes between people, and facilitating the issuance of ownership documents was announced in January of the same year.

The Vice-President of the Laws of the Parliament found writing errors and contradictions with article 75 of the constitution in the review of this plan. In the same vein, the title of this plan was criticized because it was understood from the title that the documents are graded, while there is no such situation regarding the documents. There were other objections to this plan, which are omitted from mention.

Despite all these actions, this plan remained in the legal and judicial committee of the parliament for reasons such as the sensitivity and the need for more expertise, the lack of society's readiness to require the registration of all normal documents and sharia issues, and did not make it to the public forum of the parliament. Finally, after three years, this plan was approved on the last day of the 10th parliament of the Islamic Council, i.e. on May 31, 2020.

The most important amendments made in this plan are:

- Registration of all transactions in notary offices,
- Setting up a system to register normal documents,

- Online announcement of definitive votes for each license plate by judicial authorities,
- Creating a unique ID to set up a building pre-sale contract,
- Electronic payment of real estate transfer tax in notary offices,
- Online connection of executive bodies to the electronic transaction registration system, and
- Requirement to register draft contracts in the official system by real estate transaction companies.

Design problems

Failure to end the problems of the normal document

According to article 1, which is considered as the most important part of this plan and can solve many problems in the case of proper legislation, it is stated that all affairs and transactions over two years and the pre-sale of buildings must be registered in notary offices and guarantee implementation of non-registration of these cases is not accepted in the offices and courts.

The question that arises is the difference between this article and articles 22 and 48 of the country's real estate registration law. In those materials, almost the same materials were mentioned. Now that the articles of the registration law continue to be valid and valid, and if a normal document and an official document conflict with each other and there are no evidences, proofs, etc., and then the normal document can resist the document. It is not official and the court will vote on the official document.

The problem that exists is the possibility of conflicts between the mentioned documents. For example, a person with a normal document and two witnesses files a lawsuit against another person who has an official document, and the court votes in favor of the normal document. Therefore, it can be predicted that this plan, if it becomes a law in this way, will suffer the fate of the provisions of the country's document and real estate registration law approved in 1931. This objection alone can question the principle of presenting this plan (Shams, 2017: 91).

Lack of realism in the plan

Although this plan is very important and it is necessary to become a law and implement it as soon as possible, but for this reason, we should not give up careful expert work and lose the side of caution in the process of legislation and the articles contained in it. In this case, not only the current problems will not be solved, but also more damages will be caused. This plan has flaws that can be corrected, but one of its most important flaws is "Not paying attention to the realities of society." The purpose of enactment of this law was to increase judicial security, prevent disputes between people, and facilitate the issuance of ownership documents, and this resolution should cover these goals, and if these goals are undermined by its approval, it can be mentioned that such an effective law is expected. (Khodabakhshi, 2017: 63).

According to article 1 and article 10 of this resolution, a one-year deadline has been set for registering normal documents in the country's property and document registration organization system. Although many years have passed since the creation of official documents in the country, due to the validity of normal documents, the use of this method is very popular among people. People in many villages and towns still trade informally or have no official documents to prove their ownership.

According to Talebizadeh, Director General of Kerman Province Real Estate Registry, in 2017, more than 50% of real estate transactions are done with manual contracts and ordinary documents. Now, how can people who, for many years, have been transferring their property to each other through normal documents for any reason, and register all these documents in one system within a year.

Therefore, the registration of all normal documents after the system establishment will certainly not be fully implemented, but after the

end of the one-year deadline and with the non-recognition of these documents, it will cause more disputes, and also cause disruption in the society, and the work of the judicial system will be make things more difficult (Khodabakhshi, 2017: 64).

Failure to foresee the necessary requirements for registering all real estate transactions

While this plan wants to refer all real estate transactions to notary offices, there is currently not enough capacity for current transactions in these offices, and the referrers will face multiple-day appointments.

As mentioned before, about 50% of current real estate transactions are done through normal documents. Although in article 15 of this plan, the country's Real Estate and Documents Registration Organization is required to increase the number of offices, but it should be thought about first and then all real estate transactions should be referred to the offices (Shams, 2017: 90).

Besides that, another issue that has caused people not to go to these offices to do their real estate transactions is the high registration fees. For this problem, these costs should be reduced. The problem that the decrease in the income of notary offices causes the loss to the notaries can be further compensated by increasing the amount of incoming cases by making real estate transactions mandatory, and the government can also consider a subsidy for them for a limited period.

Advantages of the plan

Registration of all real estate transactions and the possibility of monitoring for the government

By registering all transactions, the government will have the possibility of full monitoring of immovable property, and from this monitoring, it can be used for other matters such as taxes on empty houses, preventing land grabbing, and the possibility of monitoring suspicious and illegitimate transactions that were previously distance was formed from the eyes of the government, which can be one of the effects of this plan (Sadat Akhavi, 2017: 21).

Registering the full details of customers and reducing conflicting transactions

By registering the complete information of the customers, first of all, this information is fully registered in case of multiple transactions and the new buyer will be fully informed about the information of the previous buyers, and also when the criterion is the system in which the transactions will be registered, there will be no more conflicting transactions cause the creation of a case in the courts of justice (Sadat Akhavi, 2017: 21).

The return of real estate transaction offices to the position of brokers and as a result, non-legal transactions will decrease

During these years and due to the commonness of the normal document of the real estate transaction offices, they tried to prepare normal purchase and sale documents, etc. while many of them did not have legal literacy, and due to this lack of knowledge, transactions were arranged, which caused differences between the transaction parties.

If there is a dispute, and the courts of justice should deal with this inappropriate interference. In this plan, the position of these people has been correctly returned to their real position, i.e. "Broker", and they should only receive their commission right from finding the parties to the transaction and register their transactions in the system of the country's Real Estate and Deeds Registration Organization. (Sadat Akhoi, 2017: 22-23).

Receiving tolls, taxes, etc. all at once

Currently, anyone who registers a document should go to the municipality, tax affairs organization, and social security organization separately and appropriately and pay the required amount to that organization.

However in this plan, it is foreseen that the mentioned organizations should create an online system and connect it to the systems of

notary offices, the amounts will be received online through these offices, and there will be no need for people to refer to the organizations anymore (Sadat Akhavi, 2017: 21).

Objection of the Guardian Council

Despite the advantages and disadvantages of this plan, with the approval of the Islamic Council, this plan was sent to the Guardian Council for approval, but this council made 11 objections to this plan, the most important of which was the objection to article 1 of this plan. According to the Guardian Council, not accepting normal documents (i.e. unregistered documents) before the courts and offices is against sharia.

This opinion of the Guardian Council, apart from the fact that it is against reducing the validity of ordinary documents in the primary way, and the opinions of this council regarding the articles of the country's document and real estate registration law show that this council strongly opposes the reduction of the validity of ordinary documents, and there is a very small possibility. It is possible that this plan will get the approval of the Guardian Council with these provisions (Sadat Akhavi, 2017: 21).

Referral of the project to the Expediency Council

Based on what was mentioned earlier, the approval of this plan is very necessary, and despite the opposition of the Guardian Council, it is likely that this plan will be approved through the Expediency Council, which is the authority for resolving disputes between the Guardian Council and the Islamic Council (the 112th principle). It is hoped that the Islamic Council will put an end to one of the deep-rooted problems of the registration system by amending the necessary items and referring it to the Expediency Recognition Assembly and approving it in this assembly (Sadat Akhavi, 2017: 24).

Ownership and confiscation of property (immovable)

1- In the science of law, it is possible to define 3 elements of "Property"; He found "Immovable" and "Property" as follows:

1) Property: There are at least 3 specific definitions for it.

A. It should be useful and fulfill a need "It can be assigned to a specific person or nation." (Katouzian, 2005, Ch. 10)

B. The civil law does not consider the existence of an owner necessary for the existence of property, because from the point of view of this law, there are also properties that do not have a specific owner: such as "Permissible waters", "Friendly land", and "Hunting".

C. Material and legal meaning.

1. Objects that are the subject of legal transactions between individuals.

2. An expression of financial rights that allows people to benefit from material things.

2) Ownership right: "The right by which the owner has the right to any kind of usufruct in relation to his property, which is limited only by the exceptions of the law of this application of the owners' right." This is an exclusive right and according to the principle of "Sovereignty", the owner is considered to be in control of his property and independent in any kind of occupation, and the permissible limit of this occupation is the principles of "44 A.H. A" which has allowed ownership up to the limits of "Islamic Laws" and the principle of "40 A.H. A" which is actually the expression of the rule of "Harmless" and according to it, "Abuse of the right of ownership" and putting the basis of one's right at harm to others" is prohibited.

3) Immovable property: (Civil Law) (Chapter

I) property can be generalized in two ways:

A. Movable and immovable;

B. The property of the known owner and the property of the unknown owner.

(Article 12 BC): Immovable property is that which cannot be transferred from one place to another.

It is immovable, regardless of whether its establishment is inherent or due to human action in such a way that its transfer requires damage or defect of the property itself or the place of the damage.

And the assignments of immovable property are as follow:

1- It can be transferred only with "Official document" "(22 and 46) Q.S.",

2- The impossibility of its "Ownership" by foreigners living in Iran,

3- The impossibility of "Selling" or "Mortgaging" it by the guardian without the permission of the prosecutor.

4- "Right of intercession" which is only for immovable property.

5- There is a "Passage of time" of 20 years in real estate.

6- The right to invoke possession to dispossess and remove the nuisance of those who have encroached on his possessions without the need to prove ownership by the possessor (or the rule: possession is the proof of ownership is the evidence of possession) (Civil Procedure Code).

7- Allocating the right of "Easement" to immovable property (article 93 BC).

8- "Woman" does not inherit from immovable property and is deprived of the claim of "Land and field" and in the ownership of "Ain abine and trees" which she cannot have as "Heritage" and the price must be "Eighth or quarter of nobles" and "Ashjar" from other heirs. However, as long as this price is not paid, the woman has an "Objective right" to that property and has priority over other creditors. (Materials from 946 to 948 BC)

9- "Ownership right" is one of the most important "Objective rights" related to "Immovable property" as well as lawsuits whose subject is immovable ownership (lawsuits for termination and nullification and non-intrusion of immovable claims) due to invalidation of "Subsequent ownership" and proof of "Ownership former" or re-possession of transferred immovable property is considered (Katouzian, 2005: 103), and

10- "Demand for compensation and damage to real estate" is subject to immovable property. Therefore, the "Competent court" is the court where the immovable property is located, and finally the subject of the right of ownership (since it is about the administration of immovable property) is considered immovable.

Here, before dealing with the relationship of "Confiscation" with each of the 2 topics "Immovable property and any of the characteristics and rules related to it" and "Ownership", it is necessary to refer to the interpretation and definitions of the civil law of the property of "Unknown owner".

"Property of unknown owner" (or that which has a specific owner, but cannot be found) from the point of view of civil rights and in the civil law (Article 28) is interpreted as follows: Property of unknown owner with the ruler permission or (authorized by him), reach the consumption of the poor (poor = a person whose income cannot meet his basic needs), and the ruler in this law is the "Government and public forces" in the new legislation, which "Ruling government" with its own internal organizational divisions accepts and collects the general endowment" and "Consumption of the unknown owner's property".

Furthermore, the duty of "Defending public rights in criminal matters" and "Getting rid of trespassers on public and government lands" (Article 16 of the Law on State Lands, Municipalities, Endowments and Banks approved in December 1960), and "collecting and maintaining property of unknown owners and the estate of the un inherited dead is with the prosecutor...".

Likewise, according to the civil law, "Endowment property" and "Public property" are important exceptions to the principle of transferability of immovable property, which, of course, in relation to "Public property" may be changed by changing the purpose assigned to it

by the public immovable property law. Impossibility by certain contracts and lost contracts and can be further described as creditors' interest. Because in its non-transferable form, since "Seizure is done as a prelude to acquisition" and public property and endowment cannot be acquired. Therefore, it cannot be seized by creditors.

Now, in the definition of "Immovable property confiscation" which is not specifically defined in almost any article of the civil law, it should be mentioned: "Confiscation is the one of personal property and the taking over of its ownership by the public and governing authorities." Confiscation can be further examined in another way, and that issue will be "Property of unknown owner" (i.e. the property that a specific owner has, but in some ways of his ownership, the seized property is illegally seized or it is simply impossible to reach him).

In this case, the property will be "Dispossessed" from the illegal occupants, and if there is no owner left, the government will seize it. Perhaps we can call the seizure of "Unknown property" by the public authorities and its administration by the "Ruler and government" as "confiscation in a special sense". It should be noted that there is another concept in civil rights that is very similar to the concept of "Confiscation", but it should be known that the difference between these two is that they are two different methods to "overcome public rights over private rights".

In fact, what is important is that in civil rights, the direct involvement of "Public law in the general sense of the word" is at its minimum, and perhaps the most interference and entry of public law and governing powers is in the topic of "Public order" and by that to delimit the borders let's consider private rights and civil rights as its most important branches, but what is certain is that sometimes such methods are used for the purposes and interests of public powers to meet the material and financial needs of the ruling powers because in fact confiscation of royal property (for instance) is not confiscation in the legal sense of the word. Because - as mentioned in the historical background of confiscation in Iran - these immovable properties are in the possession of the ruling powers of the countries from the first periods and are inherited over many years, from dynasty to dynasty and government to government, and this transfer has continued until modern times, and in fact, after the change of government, these properties remain "Ownerless" in the legal sense.

Therefore, the ruling powers also seize these properties. Of course, it is a very important point that except in "Monarchy" governments, where the sole government is under the power of the king or the like, in other governments and forms of government, a group of people manage a society under the name of government. Therefore, the issue of ownership is a legal entity and not a real one. Of course, the concept of "Ownership" in such cases is somewhat contradictory. In other words, is this type of property considered as "Public property" or not? Answering this question is important because if it is public property, it cannot be owned.

Therefore, the question of the ownership of this property by "Real people" is ruled out, and in the case of the ruling government as a special legal person, it should not be considered as real and real ownership.

To make the topic clearer, the "Government" can be compared to a "Company" that has a legal personality and needs initial capital to be established, which is actually the mentioned property that takes the public name or "National" property. They constitute the initial capital of the company (government).

Therefore, the ownership of "Confiscated" and "Nationalized" properties is the type of ownership of legal entities. Here we come to the term and concept of "Nationalization" which is actually the similar expressed concept of "Confiscation". In relation to the concept of "Property nationalization" and, in other words, "Nationalization" in civil rights, more than "Confiscation concept" has been talked about. Of course, it should be known that some of the properties that have a "Specific owner" and are among "Public commons" (Katouzian, 2005: 105) has been given and the government can manage it only because of the province it has

over the public. Similarly, there is the fact that the purpose of nationalization is to preserve and manage such property that does not have a specific owner (essentially) and only the government for the province that it has on behalf of the people. "General" can handle it. The rules for distinguishing this property from other properties are sometimes considered its "Inherent inalienability" (navigable seas and rivers) and sometimes "The type of use determined by the government for it", which generally means properties that are "Directly or indirectly" from government has been assigned to meet "Public needs", it is separate from government property and in fact they are considered as "Public property". However, other government property is under the "Ownership" of the government. Now, if we put real estate (for example) in a division, we will see that:

A. "Public property" which is existed in all eras and is not under the ownership of any specific person (whether real or legal) due to "Inherent inalienability". In fact, it is managed by the government "To meet public needs", but it is not owned by the government. Mountains, seas, plains, mines, etc. belong to this category of property. Therefore, if at one time these properties and immovable properties (properties: The plural of property is meant) are under the apparent ownership of individuals (such as kings), it is not a proof of the real ownership of those properties.

The importance of distinguishing "Public property" from other properties is also very important because these properties cannot be owned and as a result "Cannot be transferred" to other people. For example, no government has the right to sell or mortgage the "Sea" of its country to the government of another country. Therefore, the "Description of non-transferability" of public property is the direct result of the non-possession of these properties. Therefore, it is a principle that guarantees the government's sovereignty over its territory and protects it from transfer and change of boundaries. Therefore, it is the principle that guarantees the government's sovereignty over its territory and protects it from transfer and change of boundaries, and it cannot be seized by creditors.It means that a part of the soil of a land cannot be used as collateral and public property as a means of paying the debt of a country and its government to other countries in the field of international relations.

Of course, many "State properties" usually become similar and mixed "Public properties" and most of the governments try to call these state properties "Public properties" so that if in "Legal or criminal proceedings", a judgment was given to confiscate some state properties. These properties often remain immovable and immune from any confiscation.

Although these government properties are not inalienable and transferable, it is in the interest of many governments to define them as "Public property" by enacting special laws, thus preventing the "Private ownership" of the members of the society in relation to these properties, and in fact, "They retain the monopoly of its use and exploitation. Of course, many governments have a great desire to increase territory and public property, especially "State". This is often done with both methods, i.e. "Confiscation" and "Nationalization". This right of the government, which is a type of "Limited property" and can be applied within the limits of the laws, which is called "Administrative property" in Horio's beliefs, has two aspects:

Sometimes this property becomes the "Private property" of the government, and sometimes this "Government property" which is used for "Public service" is legally converted into "Public property" and therefore it is used as "Inalienable" and "Non-transferable". Legally, it becomes "Public property" and therefore "Inalienable" and "Inalienable".

Article 26 of the Islamic Law states in this regard:

"Government property that is intended for "Materials" or "Public benefits" such as "Fortifications", "Castles", "Moats", "Military dumps", "Stoves", etc. "Government buildings and buildings", "Telegraph wires", "Government" and "Museums", "Public Libraries", "Historical Monuments" and the like, including the immovable property that the

government has under its control as "Public Goods" or "National Interests" cannot be "Privately owned", and also properties that are allocated to "State" and "Province", or "District", or "City" in accordance with public interests.

B. In article 27; "Properties that are not owned by individuals and individuals can acquire or use them (in accordance with the public interest) and the provisions contained in this law and the special laws related to each of their different types are called "Properties", such as "Favorable lands" means "Lands that are suspended and there is no settlement or cultivation in them".

Bragging rights does not actually have a specific owner, but the main difference between it and "State property" is that "State property"; it is "Inalienable" by "Private persons", both "Real and legal", and the government cannot transfer these properties to legal persons in the form of certain contracts or (private) contracts, and if at a point in time when the legal balance of the relations of the members of the society interferes with the government (disturbances and revolutions) and this property was given to private individuals; after the establishment of the government, these properties will be under the control of the government again with "Confiscation".

Therefore, one of the "Reasons for the confiscation of immovable property" can be considered as "Public and government" of this property, and since this property can be owned by private persons, it cannot be seized by private persons either. Perhaps the most important relationship between "Confiscation" and "Ownership" with "Public immovable property" is that these properties cannot be owned in short and if private individuals "Seize" it, that "Seizure" cannot be considered as a sign of "Ownership".

Because "Possession" has no meaning where there are "Inalienable properties". In other words, this possession is not a sign of ownership because, in principle, "Ownership" does not have a meaning here, so that we consider possession as a sign of its authenticity. Therefore, if this property is in the possession of individuals, it will be "Confiscated" by the government.

Now, it should be noted whether this is "Public property" that can be "Confiscated" if it is in the possession of private individuals, or can this scope be extended to "Government property" as well? The answer to this question is important because if this immovable property is "Public" it is "Confiscate able" and perhaps it can be mentioned that only legal confiscation will be this type of "Confiscation".

However, government property, which is actually the "Property of the government" and unlike "Public property" which cannot be owned by nature, this property can be owned, but in the sense that public institutions have the same ownership right as other persons over property, and in fact, although these possessions sometimes it is limited by law, but in any case, it is not intrinsically unalienable - as public property is - and the most important distinction between these two types of property should be found in the duty and, to put it mildly, the description that the government finds for it:

A. Public property because it is prepared and ready for the use of the general public, and as a result of its non-possibility, it excludes the existence of ownership description for it by the government and individuals, and also because of the province that governs the public and describes itself as a description. The custodian of public order and provision of people's needs knows that he is only responsible for the "Administration" of these properties, and only this group of properties is inalienable, but other properties are not.

B. Government immovable property that we know can be acquired by the government within the limits of the law. However, we return to our question whether the territory of "Immovable property confiscation" was extended to "State property" or not? For the above question, an answer can be sought according to the nature of this property. For instance, "Estate without heirs" is one of these, and "Proper lands on the outskirts of cities" are under the "Ownership" of the government.

Therefore, we assume that these properties are transferred to private individuals through a sale contract (definite contract); we should often consider this transfer correct and consider the contract that created it to be correct. But as an example, is it possible to transfer "Favorable lands" to private persons (both real and legal)? This is where each government gives an answer to this question that is sometimes different and not similar from other governments according to its structure and organizations. This can be attributed to the type of government and its policy and policies related to determine the balance between the two legal aspects of oneself and the society (i.e. public rights and private rights).

For the case, if most of the structure of the government is public, the volume of this state property is at the maximum (max) amount of its rights, and on the contrary, the private property is at the minimum amount. We look for the most severe and obvious example of it in "Communist governments" and based on "Collective" ideologies, where "Private property" is almost meaningless and instead "Collective property" is very powerful. On the other hand, if a government is founded on the basis of respect for "Private property", the volume of government property is very small, and vice versa, "Private property" is at their maximum. Therefore, the confiscation of government property that has been given to private individuals is a relative matter and depends on the policy of the government.

However, we remind this point at the end of the speech "Ownership and confiscation" that state ownership is not complete ownership, but rather a mixture of ownership and trust. Since the governments own these properties for the purpose of managing the society and maintaining public order, which is the ultimate goal of the science of law, they cannot easily take ownership of these properties.

In fact, as mentioned at the beginning of the "Ownership and confiscation" discussion, the government can be likened to a "Company" whose ownership of the company's property is "Legal ownership" "in the form of ownership of legal entities" and none of the company's members have the right. They cannot put the mentioned property under "Private ownership" and transfer it to others by "Contracts" according to the requirement of mentioned ownership. In fact, there is a type of common ownership that does not have "Complete and real ownership" over all the components and at the same time over any of the components as real people have. Therefore, if these immovable properties are confiscated from real people who are government property, the mentioned government no longer has the right to transfer it to private individuals, but they must manage it and use it for the benefit of the society.

A method that is sometimes done in reverse, and in fact, governments transfer these properties to private individuals to provide the "Budget" needed to run the society, which, although it may be for the sake of public rights to maintain public interests and society's system, but from the point of view of private law, the aforementioned transfer in the form of certain contracts and contracts is not "Valid" in the legal sense of the word, because the true ownership must be the prelude to this transfer, especially if the aforementioned transfer is a "Sale", one of the basic conditions of which is the ownership of the "Object" of the transferor and because we cannot consider the government as the owner of government property, especially "Public property".

Therefore, this transfer is not cash in its minimum credit amount. Just as the transfer of the company's property does not have legal validity as long as it can maintain its "Legal personality".

Examining the relationship between "Inheritance" and "Confiscation of property (immovable)"

Perhaps, the only case that can be mentioned according to the laws of inheritance in the civil rights related to "Confiscation" among the many ways of dividing the "Deceased's estate" according to the civil laws rooted in Islamic jurisprudence is the share of the deceased's wife and husband from the remaining estate. It belongs to him, as well as the properties that are left un-inherited.

A. We know that the division of inheritance begins with the true death of the deceased and after the death of the deceased; three rights and duties belong to him, which are:

1. The price of the shroud and the rights that belong to the real estate that belongs to the mortgagor.

2. Debts and financial obligations of the deceased.

3. Bequests of the deceased up to $\frac{1}{3}$ the estate and surplus on it with the permission of the heir.

Now, if the deceased has no other children or heirs in any of the ranks and classes and there is only one spouse for the deceased (if the deceased is a woman), the husband will take the entire estate of his deceased wife, but if the deceased (male) and the heir (female) and if he is a wife, he will only take his "Destiny"...

Now we have to see how much this "Portion" is $\frac{1}{4}$, and who will the remaining "Inheritance" belong to?

This supposed "Portion" is equal to the inheritance and belongs to the woman. Another important point is that if the deceased is a woman, the man inherits all of the immovable property of the woman, but the woman is prohibited from inheriting (arena) which, of course, there is a difference in Islamic jurisprudence in this possibility of rejecting the wife (Katouzian, 2005: 84).

However, who does the rest of the estate belong to? It follows from the provisions of the article "866 BC" that the "Government or government" is replaced by "the Imam authority" and this article refers to the ruler in case there is no heir of the deceased's estate. In fact, this type of property; it cannot be "Confiscated". Rather, the ruler and the government are called (public inheritance) because they are the custodians of "Public interests" and the mentioned estate does not become "Property of a private person" and therefore becomes an immovable property and an heirless estate. In fact, he is only the "Administrator" of this property.

B. "Article 327 of Q.A.H" declares:

"If the heir of the deceased is not known, at the request of the prosecutor or interested parties, an administrator is appointed to manage the estate."

In fact, the civil law has put the government and the government instead of "Province" (as it is known in jurisprudence) and in fact, it has considered the "Absence of an heir" as a condition for entrusting the estate to the ruler and the government. Here, the government is the "Manager" and "Guardian" of public interests and is not the successor and the so-called "Guardian of the heirs", and the estate is part of the public property, which cannot be acquired. But according to what was mentioned, it cannot be owned by the government itself.

"Administration of an heirless estate" begins with the court's ruling and the appointment of the administrator of the estate according to customary matters, and the intervention of the court is in cases where the deceased has not appointed an "Executive" for the estate administration, because in this case there is no need for an administrator selected by the court (Article 330 of QA h).

It is also clear from this ruling that the state or the government is not the owner and heir of the estate before the "Liquidation" and the "Estate" in the ruling is the property of the deceased and his representative manages this "Legal personality" (as the law of customary affairs in the case of an intestate deceased. He also leaves the administration of the estate to the executor or guardian.) Briefly speaking, after the writing and liquidation of the estate, which is similar to the administration of the estate if there is an heir, a task must be done to take over and own the "Ownerless estate".

The main point here is that the duty of the estate manager after writing the "Estate", and the payment of debts and financial obligations of the deceased is the one who, according to article 334 of Q.A.H., removes the bequest object, if it has been bequeathed, and the remainder of the estate from the immovable property that is in the "Possession of the

government" or "Commercial enterprises" or other persons submits it to the "Prosecutor" to keep according to the regulations of the Ministry of Justice.

In fact, the government's role here is to "Trust" the property and estate of the deceased. Therefore, it is possible to carry out the trustee's duties to a great extent at this stage of managing the property and estate of the intestate deceased. However after the end of writing the estate, this middle status (i.e. both private and public) changes and it is in the domain of public ownership and the treasury of the state (Bait Al-Mal).

According to article 335 of the Islamic Civil Code, if ten (10) years pass from the date of writing the estate and the heir of the deceased is known, the estate will be given to him and after the mentioned period, the remainder of the estate will be submitted to the government treasury and the rightful claim to it is not accepted as an inheritance from anyone under any title.

Therefore, the maximum for determining the boundary between "Known owner" and "Unknown owner" will be the same "10 years". Often, the court announces to the "Heirs" by publishing an advertisement in widely published newspapers that, if any, it will submit its documents to the Court of Customary Affairs, which deals with matters related to the estate of the deceased without an heir; and if the legal deadlines specified in the law have passed and the person(s) do not introduce themselves to the court as heirs.

The court rules that this estate is "Unknown owner" and it is from this moment that the mentioned estate becomes completely "Public" and in fact, a special confiscation or confiscation (not completely in accordance with its legal concept) occurs in practice at this stage. And in fact, the estate is transferred to the state treasury and treasury. Therefore, the stages of the "Heirless estate" are as follow:

1) Estate administration,

2) Keeping the estate as a sharia trust (according to article 336 of Q.A.H.), and

3) Ownership of the estate to the public.

Therefore, many of the aforementioned properties cannot be declared as heirs due to their owners and heirs for many reasons (as stated in the history of confiscating immovable property in Iran); for example, for specific reasons such as crimes as the like; this presence and existence of heirs is not announced, and sometimes even if there are heirs for other special reasons (sometimes not legal), these properties are assumed to be "Unknown owner" and are confiscated as public immovable property in the special sense of the word, and in fact, they go to the public treasury and Bait Al-Mal is transferred. Now, it should be noted that this "Unknown owner's estate" that is being confiscated is exactly included in "Public property"; or, as stated in the "Ownership and Confiscation" section, it is included in the scope of "Government Property".

It is important to pay attention to this question because if the mentioned immovable property is considered "Public property" as stated, it is "Non-transferable" and no one can claim its ownership. Because it is other than public property and to meet the needs of the society and it cannot be owned by a specific person (real and legal persons) either in private or public rights. Therefore, if this property is sold and transferred to an individual by a contract, due to the fact that there is no specific "Ownership" for this property by the government, such a contract cannot be valid. However, if we consider this property as "State property" under certain conditions and according to the legal provisions, it will be "Transferable" to a natural or legal person or persons. Therefore, this transfer is "Valid" (in the form of contracts and agreements).

Although it has been specified in the non-litigious law that this estate of unknown owners is added to the public property, in practice, the tendency of most governments is to consider the mentioned property as "State property" until it comes under the ownership of the government and as a result can be transferred to individuals. In this way, the incoming of the government treasury will be more than when they only have these properties in the form of administration and trust.

Contracts and agreements related to confiscation of immovable property

1. As mentioned, after the confiscation of immovable property (for whatever reason), this property is under the jurisdiction of the government and is divided into two forms:

1. Public property and

2. Government property.

It is not necessary to remind that only the state property can be transferred to individuals under certain conditions in the form of certain contracts. Now we assume that the "Opposite concept" of what was said is done; for example, according to the Law of Customary Affairs, the "Unknown Ownership Estate" is part of public property, but instead of being defined by administration and trust, the government assume that it is the state property and put it under its "Ownership" and transfer it in the contracts form. Now we are examining the status of these confiscated properties in terms of the influence and validity of the mentioned contracts:

A. Sale: We know that the 3 main characteristics of the mentioned contract; possession, compensation, and the same compensation, or at least total liability, are sold. In the assumption of the seller, the object (mostly definite) is immovable. Therefore, it has one of the main conditions, but it also has the condition of being "Compensable" which means that it can be exchanged for money, and usually this type of property has the most ability to be exchanged for money and financial value. However the third goal, i.e. its "Ownership" is debatable. Possession means that the goods transfer to the buyer and the price to the seller takes place with demand and acceptance (Katouzian, 2005: 95).

Now, we should know that a seller who is the owner of the same immovable property can fulfill the initial "Request", but in the case of confiscating immovable property, he does not actually have a specific owner, and furthermore, certain contracts provided in civil law. In fact, it deals with regulating the relationships of individuals within the framework of "Private law" and examining the relationships of individuals with rulers and governance is one of the topics of "Public law", and indeed, such an exceptional situation that one of the parties to the "Sale" is government and its relevant forces as well as the other party is private law individuals. (It is both real and legal) and in fact, a special balance that exists in terms of individuals and parties of any private law contract is not found in the aforementioned relationship, and in other words, the parties to the contract equation are heterogeneous.

Except for the problem; perhaps the most important issue is the "Ownership" of these immovable properties. We know that according to the articles (46 and 47 of the Registration Code), all contracts and agreements regarding "Immovable property" or interests in registered properties, as well as properties that are not registered, but are located in places that the ministry of Justice deems appropriate, should be made with an official document and article 48 "Guarantee of the implementation" of this ruling that documents that have not been registered in accordance with articles (46 and 47 of Q.S.) are considered as "Non-acceptance in offices and courts".

Likewise, article 22 of the Registration Act stipulates that: As soon as a property has been registered in the property register according to the law, the government will recognize only the person in whose name the property has been registered as the "Owner". Or the person to whom the mentioned property has been transferred and this "Transfer" has also been registered in the property register.

Now, if we assume that immovable property is a part of "Public property", "Ownership" which is the primary condition for registering this property in the Register of Deeds and Real Estate is not fulfilled, and therefore any registration in the name of a person or natural and private persons, especially in the name of the government is illegal" and such people are not the real owners of that immovable property; because basically, this is immovable property that cannot be possessed in its "General" sense. Therefore, this registration in the name of the specific "Owner" is not correct.

In fact, this also depends on the fact that confiscated immovable property is considered "Public property", and then it cannot be owned. Therefore, it cannot be "Transferred", and if it is transferred, it cannot be registered, and if it is registered, the mentioned official document has no legal validity.

However, if we consider it as "State property", it can be owned by the government under certain conditions, and it is transferred by "Sale" within the limits of the aforementioned "Immovable real property law". "State property" and official documents are often registered in the name of public persons (organizations and institutions belonging to the government body).

Also, sometimes there are these immovable properties, especially many properties that fall within the scope of "Construction plans" with the development of roads or educational space. Such properties are further seized and confiscated and placed at the government disposal. In such cases, the aforementioned properties are considered as "Public" and in article 11 of the law; the procedure for issuing ownership documents whose registration documents have been lost due to unforeseen events is stipulated:

"In this law, the government is allowed to foresee and take possession of those whose properties are included in construction projects or the development of roads and educational or green spaces, as well as for the establishment of public facilities within the scope of master plan.

The payment of the price of this property is required according to the regulations and is subject to the submission of valid documents with the opinion of the board subject to article 5 (which is in the area of registration of the dispute resolution board in the investigation of complaints and referrals, registration and conducting research to determine the ownership of the applicant and its amount and limits and the details of the property or rejection of the request) and until this is done, he does not have the right to transfer...".

Therefore, the aforementioned ownership documents do not belong to private individuals and cannot be transferred to these individuals either. In addition, some of the laws approved before the revolution, such as the "Land Reforms" law and the prohibition of converting agricultural land into residential land, legal problems related to the division of gardens, and the laws related to "Cancellation of favorable land ownership" and the urban land law, which according to necessity and need. It was approved by the society that there were problems to register documents and properties and the oppressed and low-income people.

Big owners who could not divide their land and sell it officially, and farmers who became the owners of farms and land during land reforms and their land was next to the road or near the city, and with people turning to cities and the uncontrolled development of cities and the creation of settlements. They had a good price, but they were not allowed to sell them. It can be seen that even here, even though the said immovable property has not been confiscated, it is practically an obstacle for the owners to take ownership of it for sale.

At the same time, the possessors of these favorable lands (as mentioned in the history of confiscation in Iran) and the owners of their ownership documents and the partners who were the possessors of a fixed and certain part, but were not able to officially allocate their share, turned to purchase these lands and on the lands belonging to the government or municipality started building buildings, which increased in number after the revolution, and their residents, who had put the government organizations in charge of the work done, and to get loans from banks and use government services (water, electricity, gas, etc.) needed a certificate of ownership and considering that their "Ownership" was illegal because the mentioned buildings were built on public property and we know that public property cannot be owned, they would not have succeeded in obtaining a certificate of ownership, the government thought of a way to establish the registration of the mentioned buildings should be determined.

According to the amendment article (147 AH)

A. To determine the registration status of the buildings that were built on the land until the date of approval of this article (31/4/1986) for which it is not possible to issue a title deed due to legal obstacles, as well as to determine the registration status of agricultural lands and agricultural plots and Gardens, both urban and non-urban, and lands outside the boundaries of the city and its boundaries used by the occupiers and purchased by individuals with a normal deed until the date of approval of this law, and due to the legal prohibition of issuing a deed of ownership for that property, the board composed of two judges appointed by the Supreme Judicial Council and one member of the registry are formed in the local registry office, and this board, subject to agreement on the matter, will deal with the matter and after confirming the transaction, will notify the local registry office to issue the ownership document and the registry office will issue a title deed for that property according to the regulations.

B. In cases where the transfer of all or a part of the property is assumed to be joint and possession is assumed, and the board of the owner(s) of the joint property approves the possession of the possessor's additional possession, to notify the registry office of the place and the registry office of the matter in such a way. The relevant party announces that if an objection from the co-owners of the property does not reach the registry within one month from the publication date, it will issue the ownership document requested by the applicant in accordance with the regulations, and if the objection is received, the matter will be referred to the competent court.

Note 1. If the agreement of the joint owners in the possession of the property is not approved by the board, the joint ownership document will be issued based on the provisions of paragraph A and according to other registration regulations.

Note 2. If the possessor is unable to present the normal document of ownership, the board shall, respecting all aspects of the matter, if the possessor is an unopposed claimant, or if the board finds an agreement between the parties, notify the local registry office of the matter for the issuance of the document, and otherwise, the matter will be referred to the court.

Note 3. In cases where the possessor of the property requests an official document with an ordinary document in hand and the owner or owners do not appear for any reason, this board will investigate and after confirming the owner's possession of the applicant, the registration office will notify the registration office of the matter in 2 occasions. It advertises appropriately after 15 days. If an objection is received by the owner or owners within 2 months from the date of publication of the first advertisement, the matter will be referred to the competent court, and if no objection is received, the registration office will issue a title deed according to the regulations. Issuing a new ownership document will not prevent the victim from going to court.

In fact, the subject of this law is the transfer of this public property to private individuals (private rights) and it is property that is apparently known as "Unknown owner" or property whose owners are known, but due to a special law (such as the law that was mentioned). They are prohibited in their property.

For instance, in note 4 of the same law, it is stipulated that "If the building is built in whole or in part on the endowment lands, the board shall appoint with the consent of the trustee and inform the "Endowments Directorate" and comply with the provisions of the endowment letter, and if there is no trustee, only with the administration consent. Endowments and in accordance with the provisions of the endowment deed and the interest of the suspended against them and taking into account all the aspects to determine the land rent, and in the issued decision, the registry office will determine the task of issuing a deed of ownership of the whole or a part of the nobles with the land rent.

In fact, one of the most important issues in the field of immovable property is that the owner or owners have prohibited themselves from

occupying it and entrusted its supervision to a trustee or endowment administration, and if people build their immovable property in these areas. According to the note 4 of the mentioned article, the task of the registry office is determined in relation to the case of issuing the ownership document of the whole or a part of the nobles with the condition of a certain fee. Therefore, under certain conditions, this prohibition of Sufism will be lifted despite the laws, or at least the ability to benefit from it will be allowed.

From the above mentioned cases, it can be observed that the issuance of a title deed in each article and case of the above notes, which in each of them somehow shows the possibility of breaking the legal monopoly of "Public property" and especially "State property". In addition, many people who in some way "Possess" these properties can face the "Confiscation" of these properties, if they claim the reward, either in the description of trust and "Trustee" or in the form of "Lessee" and beneficial owner under conditions can be claimed.

B. "Lease": We know that the lease contract is one of the most important definite contracts. According to article 469 BC, this defines rent as a contract by which the lessee becomes the owner of the interests of the lessee.

Now, it should be seen according to its characteristics that it is "Proprietary", "Reimbursable", and "Temporary", in the case of confiscation of this immovable property, the status of the owner of its interests, that is, the tenant of this property, who is the actual or unknown owner at the time of confiscation or the deceased is without heirs, or the property in question has been nationalized by law or is located within the boundaries of government lands, and before any of the cases, the tenant resides as the owner of interests in that immovable property.

Here, if the object in question is "Confiscated" and the effect of this confiscation is the deprivation of the owner's ownership of the object, can it be mentioned that because the contractual lease is "Possession" and according to the lease contract, the lessee is actually the successor of the owner and has the same authority and rights for a specific period as stated in it is a lease, and since the property of the lessor has been taken away due to "Confiscation", as a result, the ownership of the benefits will be further taken away from him and the lessee.

According to what is mentioned in civil law about "Rent", there are two types of profit exploitation, one is the ownership of the profit and the other is the "Right to usufruct", which is actually what is called the "Rent" and is actually the particles and moments of the profit. It is created in the property of the tenant, while with the object imprisonment, these particles are created in the property of the object owner, and the beneficiary of the said usufruct gets the right to use it.

After the end of the usufruct period, the usufructuary does not have the right or permission to occupy the property. Therefore, usufruct is a weaker level of beneficial ownership, and in it, the owner of the right does not replace the original owner and does not benefit from all his privileges. However, the beneficial owner has complete control over it, and in this sense, he is like the original owner.

It is for this reason that when the "Confiscation" of the "Immovable property" of the mentioned property takes place; the owner of the benefit because he replaces the original owner and because the benefit is subject to the same; that is, it is through the existence of the object that a benefit emerges and finds the ability to transfer to another person. Therefore, since the original ownership has been taken away and the immovable object is considered as "Public property" or at least "State property" and as a result, it can be owned by the "Owner of the immovable object". Consequently, this property cannot be acquired by the lessee. Therefore, he will be "Removed" by the public forces.

The lease contract causes the lessee to pay an amount as "Rent" which is actually done in return for the interests' ownership, at the same time article 481 of the BC stipulates: "When the leased property is out of use due to a defect and cannot be used." If the defect is fixed, the lease

will be invalidated. Indeed, it is because of the defect removed from the usufruct and as a result, it causes the lease contract to be invalid.

For this, any act that makes this usufruct impossible, causes the lessee to have the right to terminate, and as an example in articles 471, 481, and 496, the tenant should be able to usufruct until the end of the lease term, and if in the meantime, if it is not usable, the lease will be canceled from then on. At the same time, "Confiscation" causes this immovable object and consequently the usufruct from it to be removed from the ownership of its owners, and it is like the object defect or the destruction of the object and its removal from the scope of usufruct. Therefore, the lease contract is terminated.

The confiscation causes the "Termination of the rental agreement". However, sometimes the public authorities, especially if they consider the mentioned property as "State property", can restore the usufruct ability to the mentioned property and establish a contract similar to "Rental contract" as the one that replaces the "Private owner" with the former lessor. As a rule, the second lease contract is valid when the immovable property in question becomes "State property" after "Confiscation" and not "Public property". Since in the second case, all contracts including "Sale and lease" by the government are "Null" because in both contracts "Identical ownership" is a condition.

Even if we assume that only "Beneficial ownership" in civil law is sufficient for "Leasing" and concluding a lease contract, still "Public property" cannot be considered as "Beneficial" ownership. Therefore, if we assume the treasury and public property, it cannot be owned and therefore cannot be sold and transferred by other forms of contracts, such as "Lease", in the form of interests' transfer.

In addition, the purpose of the lease is that the lessor owns and surrenders the leased benefit or, more precisely, has the ownership right to the benefit to the lessee in return, but because the benefit of things is always associated with the object and the customary way of acquiring the benefit is that the object is the property. It is placed at the disposal of the contracting party, with a slight tolerance; the object (the object of the lease) is the "Subject of the lease".

Therefore, first of all, when the property in question is confiscated (i.e. confiscated object), in fact, it should be surrendered along with the object, and the condition of the said surrender is that the mentioned property is in the possession and under the object ownership, which is either with the owner of the object of the contract or under the control of the owner. The owner of the benefit assumed that none of these two conditions are fulfilled.

Furthermore, if the "Confiscated property" is assumed to be government property and under certain conditions, it is owned by the government and or institutions are in charge of the confiscation instead of the sale contract; if the decision is to keep the rent for the former tenant, it should be seen what the conditions of "Change" are? That is, is this "Exchange" subject to the same provisions of private law and civil law, or the law of owner and tenant, or another law governs this relationship (government and tenant), it seems that there are no special rules and regulations in this regard in the civil law. Therefore, the regulations of each of these authorities are responsible for the way of payment of exchange (rent) or rent.

Moreover, whenever the government wants to, due to the fact that it is a public power, it can violate the rules of private law within the limits of specific regulations to maintain public order, whenever it decides to change the way it occupies the said immovable property, and using the power the public will be able to "Unilaterally terminate" the lease agreement. In fact, it is as if the mentioned "Rental contract" is a type of "Ighaa" that the government can easily cancel without needing to know the tenant's will in that condition and cancel it with his consent. Of course, in this regard, the tenant can be treated in two ways according to the repairs or improvements he has made to the movable property, and if the land is in his possession, he has planted trees or agricultural crops on it:

A- Since the lessee is the trustee of the immovable property until the end of the lease period, and after that, if he surrenders the immovable property to the owner and after the

lease period expires, the face of "Trust" becomes "Usurpation". Of course, if the owner requests the return of the same; however, the tenant refuses to return despite the end of the lease term.

In the case of confiscation, the government replaces the original owner, whether in the case of the "Administrator" in the case of "Public property" it is assumed to be the same and immovable property, or in the case of the "Owner" in the case of "State property" it is assumed that there is a deadline for the tenant. After the compulsory dissolution of the previous "Lease contract" or the completion of the new lease contract (tenant with the government) or due to the intervention of public position of the government, it is determined even before the legal dissolution of the lease contract, and after the end of this period, which is usually not more than 15 days, the tenant He loses his trust and is considered a usurper, and "Usurper" according to the articles of civil rights and civil law, if he builds a building or uses a tree or other materials on his land with materials belonging to another, the owner of property and the tree can destroy it, and if they agree on the part of it, this part can be taken.

Therefore, either this building or its buildings will be demolished, or if the tenant remains, he will have the right to receive the same amount.

B- At the same time, if the property in question is considered as public property, no special law supports the payment of this reward. Of course, the cost of carrying out basic repairs in the property such as: "Creating a roof in case of destruction", "Repairing rotten pipes", or "Building separate entrance doors", and the like can be paid at the request of tenant under certain conditions.

Conclusion

After the approval of the country's property and documents registration law in 1931, the purpose of which was to protect property rights, interpretations were made, due to which this value was shaken. In 2016, the Guardian Council considered the application of articles 22 and 48 of the Registration Law to invalidate ordinary informal documents with valid legal or sharia proofs against the authenticity of their contents, which caused the foundations of property rights to be shaken even more. To solve this problem, a plan to improve the credit of notary documents was presented in 2016, which was finally renamed to the plan to require the official registration of real estate transactions and was approved by the Islamic Council in 2020. The plan to require the official registration of immovable property is one of the necessary plans for the country's registration system, the gap of which has caused many problems.

In this plan, despite its included positive things, it will still have the main problem, i.e. the conflict between normal documents and official documents, and it is further feared that due to the lack of preparation of the necessary infrastructures, platforms, and requirements of this plan, in practice or as a result does not achieve the desired or even becomes an abandoned law.

Real estate transactions without setting up an official document are important issues that happen a lot. Regarding real estate according to article 22 of the Registration Law: "The government will recognize only the person in whose name the property is registered or the person to whom the mentioned property was transferred and the owner. Today, most transactions that are regulated regarding immovable property are normal, and the conflict between social realities or registration regulations, etc. has caused many problems in the society and especially in the courts. According to articles 46 and 47 of the Document Registration Law, many transfers regarding real estate interests should be registered. Otherwise, according to article 48 of the aforementioned law, such documents will not be accepted in any of the offices and courts.

According to what was said; two questions are raised: one, which of the interpretations presented in articles 46, 47, and 48 of the Registration Law is in accordance with the reality, and the other is where to look for the solution to the mentioned conflict and also to

prevent the multiplicity of lawsuits and how to solve it. In relation to the first question, it seems that the opinion of those lawyers who believe that the sale contract is still a contract of consent and that the provisions of the registration law do not include it in the category of ceremonial contracts is compatible with reality, and it turns out that the courts have accepted the same opinion and they act on it and even take help from other evidences to prove the sale occurrence and consider them as positive for the lawsuit.

Regarding the second question, to prevent the increase of cases and the increase of judges, it is necessary that articles 47 and 48 of the document registration law, which are among the guarantee laws and not determinative laws, should be enforced in the case of real estate transactions, whether houses or apartments, and this opinion is against the basics. It is not Sharia because the judges of the courts say that they do not deal with normal documents related to transactions of immovable property, not that they consider the sale contract outside the notary offices to be invalid. The result of the present research indicates the possibility of validating normal documents (only by the court order) and accepting the registered and official document as "An effective reason to prove the claim".

Suggestions

Practical suggestions

1- Increasing the number of notary offices, reducing their costs, and facilitating document registration procedures.

2- Increasing awareness and encouraging people to officially register real estate transactions in the national media and cyberspace.

3- Determining the transition period and increasing the appropriate deadline for the initial registration of existing normal documents to two years after the above two things are done.

4- Requirement to register all normal documents in the notification system of registration organization and "Announce invalidity" of new transactions that are not registered in the notification system of the country's document and real estate registration organization after the approval of this law.

5- If the Guardian Council insists on its opinion, the Islamic Council can send this plan to the Expediency Council.

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