
The Legal and Jurisprudential Effects of a Provisional Agreement on Immovable Properties

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Abstract

Real estate transactions without a formal document are important issues that happen a lot. In the case of property, 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 property has been transferred and is the owner." Today, most real estate transactions are normal, and conflicts between social realities or registration rules, etc., have caused many problems in society, especially in the courts of law. Transfers relating to the interests of the property must be registered. Otherwise, in accordance with Article 48 of the said law, such documents will not be accepted in any of the departments and courts.

The role of the deed in real estate transactions is such that it can be said that most of such transactions are established and realized by the deed. What is certain is that the deed has always been and is common in transactions and as a document. Ordinary and a contract of commitment to make a sale valid in the future Article 10 of the Civil Code stipulates that private contracts are valid for those who have concluded it, unless it is explicitly against the law. Many lawyers believe that the above article the reasons for the necessity of fulfilling the contracts, in addition to certain contracts, also include indefinite contracts, and one of the most important of these contracts is the contract of commitment to form a sale in the future, which is generally regulated in the form of an ordinary document. On the other hand, one of the topics emphasized by the Holy Quran and the Holy Prophet of Islam and the Imams of the Infallible has been the issue of fulfilling the covenant and the necessity of fulfilling the obligations of individuals towards each other. It has been proven that according to the reasons presented, the verdict of accuracy is apparently more correct and there are jurisprudential reasons for this.

Keywords: Affidavit, ordinary document, validity, commitment, jurisprudence, law.

Introduction

From the mid-nineteenth century onwards, the theory spread in jurisprudence that the point of distinction between contractual liability and civil liability (in the specific sense) is the existence of the will and its role in contractual liability. Because the main basis and source in the realization of contractual responsibility is the will of the parties, while civil liability is created according to the decree of the legislator. Increasing legislators' involvement in how contracts are concluded and the complex nature of ancillary contracts has cast doubt on the role of the will in contract law, with some skeptical of the principle of the rule of will and believing that the principle is the work of jurists. And does not correspond to facts (Robertson, 2006, p.26). Thus, a transactional procedure is a set of behaviors that are normally expected to continue and, as long as its elimination is not specified by the parties, is used to complete the contract and determine the intentions of the parties (Ch-Pamboukis, 2005, p.113).

Of course, if the situation changes in such a way that trust in the former trend is not reasonable, the transaction procedure cannot be considered valid (126 Honnold, 1999, p). The scope of the transaction procedure is only in the relations between the parties and its binding power will be limited to them and it should not be considered as one with the custom that includes all members of a class (Writers Group, 1374: 154). As a result, its attribution to the parties is more than custom and in the case of conflict, it will precede custom (115, Ch- Pamboukis, 2005, pp114).

Article 205-1 of the United States Uniform Commercial Code defines transactional procedures as follows: "A transactional procedure is the formerly repeated conduct between the parties to a particular transaction which, based on fairness, can be construed as a mutual understanding "He considered the interpretation of terms and other actions and used it to give a special meaning to the contract or to complete and limit it." It is now widely accepted that the contract is not formed in an environment independent of events and relations between the parties, but is the result of a relationship that is formed between the parties and must be interpreted according to it (51. Mitchell, 2007, p).

The decline of formalism in contract law and the acceptance of the rule of will also strengthen the foundations of the validity of the transactional procedure between the parties (Mitchell, 2007, p.96).

Perhaps it can be said that the most important and common economic contract between people is the contract of sale or the same contract of sale and purchase, which in the contract of sale the seller is called the seller and the buyer is called the customer and according to the contract, certain property Other specific property is transferred and seized from the buyer's property under very specific legal and contractual conditions of the parties to the exchange. In a financial sale contract, what is transferred from the seller to the buyer is called the seller or the same item sold or traded, and reciprocally, what is transferred or paid by the buyer to the seller is called the price or amount traded. In the contract of sale, in addition to the general terms and conditions of the contracts, it is necessary to observe the special principles and elements of the contract of sale, both in terms of the type of contract and in terms of special conditions governing the parties who conclude it.

Due to the fact that the subject of the contract of sale is property, but depending on the variety of property and due to their differences in nature, sales contracts are also different and diverse. In a division, property is divided into movable and immovable.

A promissory note is a contract during which a sale is made. A sale is a contract under which money is sold to another. As a result, a written contract is usually drawn up between the parties (seller and buyer or seller and customer) and is based on Its basis is money in exchange for receiving exchange or price or price, it is considered a testament. This term is also used as a letter of sale and its meaning is no different from a testament. Sometimes people want to buy or sell money, but the arrangements are not provided, for example, the buyer does not have enough money or the seller has to deal with the liquidation of municipal and property accounts, etc. In this case, the parties enter into a normal contract. And in it, they undertake to be present at a specific time and place (notary public) and to carry out the transaction with the conditions specified in the contract. This contract is called an affidavit.

Some people consider the promissory note to be composed of a promise and a letter, that is, a written promise, and on this basis, they believe that according to the promissory note, the obligor cannot be required to fulfill his obligation, and on the other hand, the promissory note in legal language, it is known as a contract of sale, and on this basis, they believe that the obligation of the obligor to fulfill the obligations can be requested. It should be noted that what is said in the legal language of the affidavit is what is commonly called the affidavit, and it is not possible to impose different legal effects on them on the basis that the words affidavit and affidavit are different.

The guarantee of performance of the affidavit, like other contracts that the parties enter into to fulfill an obligation, is valid in court and they must implement its provisions, according to which the obligation (coercion) of the party that refuses to fulfill its obligation can be requested from the court. Thus, if the seller refuses to appear in the notary's office and transfer the property to the buyer, the buyer can ask the competent court to force him to name the document in the office, and the court can, at the request of the plaintiff, order Issue an obligation to make a formal transaction and pay the obligation.

Theoretical Foundations

The concept of sale in the term

In jurisprudential terms, sale is "a requirement and acceptance that indicates the transfer of property in exchange for a known and definite consideration" (Muhammad ibnMakki, 2003) It is that with the consent of both parties, the object is transferred to the other party in exchange for a definite and known exchange "(Muhammad ibnMakki, 1414 AH)" Sale is the exchange of property for property, possessively and possessively ".

Hanafis: Sale in the term of jurists refers to two meanings:

- 1- Special meaning: selling the same with cash (gold and silver) and the like. They also state that if the word absolute sale is used, there is no cancellation except in this specific sense.

2- General meaning: Exchange of property with property in a special way, so property includes what is objective or cash (Jaziri, 1419 AH).

The Malikis have also divided it into specific and general meanings and say: Sale in the term of jurists has two definitions: One is the definition for all sales people, which includes mere sale, and the other is the definition for a single person of these people (same).

Hanbalis: The meaning of sale in Sharia is the exchange of property with property or the exchange of permissible benefit with permissible benefit (same).

Shafi'is: Sale in the Sharia is the confrontation of property with property on a special basis, that is, a contract that has the confrontation of property with property and the meaning of confrontation is exchange (same).

As can be seen, the jurists have offered different definitions of sale and each of them has tried to express the nature of this contract in the best and shortest terms. Examining the expressions of the jurists in the definition of sale, it becomes clear that all of them sought to show the basic features of sale and their differences are only in the literal definition of sale and there is no difference in its nature as one of the specific contracts.

Iranian civil law also defines sale as "possession of the object in exchange for the known" (Article 338 of the Civil Code).

Importance of sale

One of the necessities of human beings in today's society is sale. At this time, everyone has some kind of buying and selling. A person whose job is to buy the necessities of life from morning to night, or the markets where he buys and sells sex, if there is no buying and selling, society will be disrupted; Because there is no human being who does not need another human being, and this satisfaction of need is achieved through communication with each other and trade.

Foundations of the legitimacy of sale in Islamic law

In our vast Islamic society, the existence of common and common transactions of affidavits as ordinary documents in civil law and registration has a special validity that, in parallel with the existence of official and legal documents, has been able to establish its place and position in social relations. Consolidate the tendency and desire of the people. This type of trade in terms of having market characteristics and indicators such as trust and confidence of its rulers, ease of use, acceptability, generality, authenticity, etc. has been able to increase its demand and creation in its current form so that It is impossible and inconceivable to separate it from our vast legal system. On the disadvantages and disadvantages, its widespread existence at various levels has faded and compensated for its possible and imagined shortcomings. The holy sharia of Islam, the founder and forger of the Sharia, has rejected and rejected any hardship and difficulty in enacting laws and regulations. Enjoy it and be pampered in the boundless ocean. Islamic Sharia considers loyalty and adherence to transactions necessary for all obligors and it is necessary in order to achieve perfection and happiness in this world and the hereafter, and has provided the basis for

the permanence and goodness of society in a proper and desirable manner based on healthy and reasonable relations.

The rulings of trade, like other rulings, should be sought in the "Umm al-Dalil" of the four evidences, and the rules and rulings of the Shariah in this regard should be obtained.

Quran

The most basic and strong source and source of Islamic rules is the Qur'an, which with its documented and reasoned arguments to all human issues and issues without exaggeration, the necessary and appropriate answer to the urgent and permanent need of human society in all times. And places have proven.

In the Holy Qur'an, the word "contracts" is used in the plural, the singular of which is "contract" and the word means "knot". Because the parties to the transaction communicate with each other and are tied in a way to make the causes of the contract external.

There are several reasons for the legitimacy of the sale, some of which are:

Verses: "God permitted sales and usury" God has made sale lawful and usury forbidden.

"Do not waste your property with me, unless it is a business of debt." "Do not eat your property among yourselves in a forbidden and illegitimate way, unless the trade is done with the consent of both parties.

IbnQadameh has testified to other verses in her book Al-Mughni: "And bear witness if you pledge allegiance".

Tradition

After the Holy Quran, the second reason for inferring the Islamic rules is the conduct of the infallibles as commentators and as the bearer of divine revelation and the pure Imams. The Holy Prophet of Islam has introduced the real interpreters of the verses and rules of Islam, adherence and observance of the provisions of the contracts as the duties of a Muslim and considered it as a Muslim condition.

The noble hadith "The believers are on their terms" which was issued by the Messenger of God, indicates the necessity and observance of the permissible conditions, and the conditions that are contrary to the Book of God and lead to the halal or halal sanctity, are not valid and will be null and void. The hadith "Muslims under their conditions, except for all the conditions contrary to the book of God Almighty" (Tusi 1406 AH) and other hadiths refer to it (Jawahar al-Kalam, vol. 3).

Achieving legitimate trade involves legitimate ownership and the use of reasonable means and factors that bring the intentions of the parties to the transaction closer together and commitment to its effects, which is an integral part of it, is necessary for the parties to the transaction.

Assignment and delegation of the manner and manner of trade is the responsibility of its owners and is derived from the principles and rules of jurisprudence and law.

For this reason, in the shadow of the trust and confidence of the parties to the transaction, the foundations of the transaction are provided and the reasons for its transfer are created, which explains the validity of the affidavit transactions in this regard.

The sales that were made in their presence, or the buying and selling of the innocent themselves, the attorneys hired people to buy or sell something for them, if the sale was illegitimate, they would not approve it (Ansari, 1427 AH).

The third reason for inferring the Sharia rulings is consensus, which is out of our discussion, but in a brief and concise statement it can be said: Consensus with the Imams should not be revealed, so the consensus of jurists and mujtahids on a promise that is discovered from the word of the infallible Innocent words will not be valid. Writing and writing trade is considered as a matter of consensus and guidance in terms of consensus, although in some sayings, especially Qadma, it has been considered obligatory, which is fully mentioned in the sources of authentic Islamic sources, but the word of correctness and strength is the same as the recommended rule. It is as if Sheikh Tusi (RA) has believed in the consensus of the people of his time in this regard. In other words, the consensus of Muslims, old and new, has considered selling at a certain price but without writing as permissible and forcing the writing to be a cause of hardship and embarrassment, which has no compatibility with the rules of Sharia, so punishment and punishment in this regard is abolished and impermissible. Has been counted. Finally, in case of attempting to write transactions, it should be done in such a way that it is not invalidated, which is the case with all jurists and mujtahids.

The principle of correctness, which is current in the affairs of Muslims and is part of the way of life of Muslims, does not believe exclusively in consensus on transactions, but considers it to be the focus of rational affairs and acknowledges that people with different beliefs and religions in transactions and policies. They unanimously carry out their words and deeds and ask the plaintiff for proof if he claims corruption. The transaction of covenants, since it is not in an administrative maze and is easily and without formalities regulated by the parties, is closer to the Sharia ruling than the preparation of an official and legal document that faces many problems that most People, especially the lower strata of society, are not able to play it.

Wisdom

Wisdom has been introduced as a reason in the rich teachings of Islam, but for some reason among the evidences of the rulings, it has been less accepted to the extent that some great jurists have excluded it from the list of religious reasons. It has been discussed in detail, which is not a long and short discussion in this article. For this reason, it is believed that whenever reason rules, it may be derived from that Sharia ruling. It is like drowning two people at the same time, when it is possible to save one person, and one of the two people has more value and status according to his attributes.

On the other hand, the intellect has an independent understanding of the issues and does not need confirmation, as the intellect itself understands that rape is bad and goodness is good, so it does not need the approval of the shariah.

Therefore, the intellect is not the source and reason of the Sharia, but its meaning is that the intellect is the reason for proving the Sharia ruling and we reach the Sharia ruling from the rational understanding, so by inferring from the independent ruling of the intellect, it is not permissible to seize property and issue a title deed. The confiscated property is aggressively defective in terms of Sharia and law and there is no effect on its authenticity, or the holder of contingent rights in the adjacent property can move around in the adjacent property as much as necessary; Because the owner of the right of easement has a reasonable right to the development of his property; Therefore, factors such as reasonable acquisitions, choosing the manner and manner of transactions, not disturbing other people's property, registration and confiscation of property are rational matters that are continuously practiced by all or most people and adherence to its effects has become customary and institutionalized. In this respect, custom is also one of the legal sources that strengthens the implication of the claim, so the disorder and dispute in such cases and instances, the livelihood and resurrection of the people face problems and legal discipline is disrupted. Therefore, if the very nature of the transaction is confirmed in the soul of the transaction by means and reliable means and the Sharia Emirate, it is unreasonable to weaken it rationally and has no justification, in this respect, the confidence and trust of the transactions in this affidavit. The context is defensible and justifiable and in this respect is valid according to the Sharia.

Therefore, in the sincerity of the word, approval and enforcement of affidavits in Sharia Anwar and the wide desire of the people to accept it and the acceptance of the indisputable principle of private contracts and agreements and ordinary transactions in the legal system and registration and documentation of property as a necessity. In order to develop the judiciary and registration, the social urgency requires the existence of a comprehensive, sound and permanent law based on Islamic rules so that, as a result of its correct and correct implementation, the society enjoys its blessings and enjoys the sweetness of its rules. It is hoped that with the approval of the rules, laws and regulations of Islam, the Islamic Republic of Crimea in achieving sustainable growth and development in all the pillars of a successful society and social justice in all areas, expansion and service to the people as worship and divine blessings.

Pillars of sale

The elements of sale are 6 types and the meaning of the principle of sale is the same form that if it is not, the contractors will not be characterized as seller and customer. The pillars of the sale are: 1- The contract of sale 2- The parties 3- The parties, each of which has two parts:

Form: acceptance, seller and customer, contract against, price or value

The Hanafis consider the sale to be only one pillar, and that is the demand and acceptance, which implies the exchange of two properties between the seller and the customer of a word or deed (Jaziri, J 2: 203).

Conjugation (requirement and acceptance)

The form is: the demand and acceptance that indicates the transfer of property in exchange for exchange "(Muhammad ibn Maki, J 1: 184).

The contract of sale, like other contracts, needs to be required and accepted. Request and acceptance are words and phrases that by saying it, the parties to the contract express their will to conclude the sale.

The contract of sale, like other contracts, consists of two parties. Demand from the seller and acceptance from the customer. In sale, it is a condition that it be called a concubine and be in the past tense (same).

The seller says I sold. The customer should also say that he bought it, or accepted it, and it is enough to read the syllable in any language, and Arabic is not a condition in that.

Our jurists believe that in the sale of demand and acceptance is valid and occurs with any word that indicates the purpose, although it is not explicit (Baqir al-Sadr, 1410 AH).

The Shafi'is state that sale and purchase are concluded with any word that indicates ownership and the meaning of the purpose (Jaziri, J 2: 203).

Hanafis: Sale and purchase are concluded with any word that indicates the meaning of possession and acquisition (Jaziri, J 2: 204).

Malikies: The sale is concluded with any promise that indicates consent (same).

The Hanbalis and Malikis say that one of the conditions of the formula is that there should be acceptance in the parliament and that there should be no distance between the demand and the acceptance, which traditionally indicates the renunciation of the sale. For example, the seller should say: I sold it to you, then before being accepted in the parliament, they should disperse, the sale will not be concluded (Jaziri, J 2: 219).

Hanbalis: Any word that conveys the meaning of sale and purchase concludes the sale and is not limited to the form of a word in a certain word (Jaziri, J 2: 206).

Contractors (buyer and seller)

In a contract of sale, the seller is called the seller and the buyer is called the customer.

1. The parties or the parties to the contract must be qualified for the transaction and be mature and sane; Therefore, buying and selling an insane person is not correct.
2. Well-known jurists say: The transaction of a child is void (Ansari, J 7: 186).

The Hanbalis consider the sale and purchase of a son to be correct, even if he is not discriminated against and his guardian did not allow it (Jaziri, J 2: 208).

The Shafi'is do not consider the sale of four groups to be correct, one of which is a sabbath whether it is discriminating or not, and the other is insane, a slave and a general. Even these people believe that the sale of a child is not concluded even if his guardian has given permission, but in the case of Abd, they say: If his master allows it, his sale and purchase are valid.

The Hanbalis also consider puberty and growth as one of the conditions of the contractors (Jaziri, J 2: 219).

The Malikis consider one of the conditions of the contractors to be obligatory and say that the sale of a discriminating child is not obligatory, although it is correct, unless the discriminating child is the lawyer of the obligor, in which case the sale is necessary (Jaziri, J 2: 219).

- 3- If they have intention and will, it is not correct for a person to make a sale unaware or in a dream or with a joke (Muhammad ibnMakki, vol. 1: 185; Articles 219 and 191 of the Civil Code).
- 4- Both have authority. To trade on the basis of self-satisfaction and goodness, not out of reluctance and coercion (Ansari J 7: 189-188).

The first martyr has conditioned perfection and authority for the contractors in the book of Lamah, and it is correct for him to consent after the reluctance has been resolved (Muhammad ibnMakki, vol. 1: 185; Articles 203 and 209 of the Civil Code).

- 5- The parties to the contract must own what they give to the other party; In other words, the seller must be the owner of the sale, and the customer must be the owner of the price, or have the permission of the owner or the legislator. Like the guardian of the child, or the guardian of the orphans who have permission from the shari'a (Ansari, J 7: 189).

However, the legal guardian of the parties to the contract - even if one of the parties is a lawyer - can sell on behalf of the parties to the contract. If someone sells with another's property, the contract of sale will be a prying one, and its validity will depend on the permission of the owner or his deputy. ShahidThani states in his book Lamah: Silence of the owner when performing the contract of sale or when offering permission to the owner is not considered as permission (Muhammad ibnMakki, J 1: 185).

The place of the document in the Holy Quran

In the most authentic written religious document of Muslims, the Holy Qur'an, after stating the rules related to charity in the way of God and also the issue of usury, in verse 282 of Surah Al-Baqarah, which is the longest verse of the Qur'an, states precise rules and regulations for commercial and economic affairs So that the capitals find their natural growth as much as possible and there are no deadlocks and conflicts among the people. In verse 282, there are nineteen important commandments regarding financial transactions (TafsirNomon, MakaremShirazi, 1992, vol. 2). Verse 282 says: "O you who believe, whenever some of you owe others owes others. "You have to pay it for a certain period of time, write it, and an author among you must write the text of the contract fairly and justly ..." "O who believe, if you are judged in debt for a specified term, write it down, and let a writer write it in justice between you." Which contains important points which are:

- 1- The subject of writing
- 2- The reason for ordering your writing
- 3- The implication of the command to write is obligatory or recommended
- 4- Commanding to witness religion

Verse 282 of Surah Al-Baqarah is a sign of the care and comprehensiveness of Islam, which in the period of ignorance and among the backward people. Do not take evidence and rubbing and rubbing is subject to loss, whatever he prays, God does not answer and says: Why did not you follow my orders (Kunz al-Daqa'iq, vol. 2, p.46).

The place of the document in jurisprudence

The great and famous Shiite jurists, from the earliest to the most recent, have given detailed proofs of the claim based on narration sources and the Holy Quran in their books, and have similar views on this subject. They have made a detailed plan and points can be extracted about the document only from the sub-sections and special parts of their writings.

Allameh Hali Rah believes that it is not permissible for a judge to trust his handwriting if he has forgotten the contents of the court, because it goes in the line of possibility and possibility of being fabricated. Even if he can, he can narrate the news as much as possible, not to testify or rule according to that line (Allameh Hali (RA), *The Judicial Trade and the Martyrdom of Hassan Esfandiari*, translated by No. 96).

Mohaghegh Hali Rah, the author of the book *Sharia al-Islam*, says in the same chapter: Delivering the ruling of one ruler to another is either by writing or by word of mouth or testimony, but writing has no validity because of the possibility of simulation, but if the evidence is evidence in order for him to witness them with his verdict, acceptance from the second ruler is necessary (Mohaghegh Hali (RA), *Sharia al-Islam*, 1992, vol. 4-3).

“Ending the ruling of the ruler to the other Either, by writing, saying, or testimony, as for writing, you express it to place the likeness As for the testimony, if the evidence is testified by the ruling, the testimony of either of them is based on a ruling, then it is accepted because that together needs it”.

The great founder of the Islamic Revolution, Imam Khomeini, also states in *Tahrir al-Vaseela*: "The verdict will not be influenced and the hostility will not be decided except on the verbal and written composition." "If the writing belongs to the first ruler and he has intended its contents, it is not permissible to enforce the ruling on him." Vol 2).

The late Mohammad Hassan Najafi, the author of the noble book *Jawahar al-Kalam*, has given more credibility to the document by observing conditions that are not mentioned in the words of other jurists and can be a little effective in proving our claim. In order to have a scribe judge who writes down the situation in court, he first mentioned the conditions for the scribe, which are: maturity, intellect, Islam and justice, and that he should be aware so that he is not deceived even if he is a jurist. , Will be eligible. At the same time, they believe that the above-mentioned conditions are not necessary because even in spite of all the above-mentioned conditions, the fruit of writing is only a reminder of what has happened and does not give the authority of Sharia to the document. But in spite of all of them, the necessary assurance is obtained for the verdict based on the letters (Najafi, *Jawahar al-Kalam*, 2002, vol. 4).

Regarding the fatwas of the jurists, it should be noted that the invalidity of the document in their opinion, firstly due to the lack of narrative and religious documents and also that at that time the document was not used at all for various reasons to be considered and secondly due to lack of tools and They could not rely on a proper mechanism to protect the document from error, distortion and forgery. This is also confirmed by the fact that the owner of the book *Jawahar al-Aklam* also issued a fatwa authorizing the issuance of a verdict based on his writings in the event that the court clerk meets all the conditions. Therefore, today, when these obstacles have been

removed and the trust in the document, both in custom and in terms of science, is higher than any other reason, it is appropriate to be among the highest arguments, at least and without considering other features.

Irrespective of the fatwas of the jurists, the following cases have been mentioned, which we will address below.

Jalalian writes in his treatise: It is very broad; on the other hand, due to the fact that these expressions have been made by non-experts and based on the needs of custom, because there are many legal disputes about these expressions, these disputes are in such a wide range. It has led to irregularities in legal opinions and a tasteful approach to various cases, and not only has it not met the need for custom, but it has added to the problem of a lack of regular judicial procedure, and consequently has caused concern and suspicion among the people. The research intends to meet the needs of custom by properly interpreting and correctly describing the expressions (cancellation and regret and paying attention to the basis of its creation and while creating order in the judicial procedure based on jurisprudential and legal regulations. It is worth mentioning that the expressions (cancellation and regret) have been customary, so no significant research has been done on it so far, and only brief contents according to R. It has been stated that they are also contradictory and even contradictory and are more confusing than helpful. Therefore, in addition to theoretical discussions, the mentioned research is also very useful in practice due to the novelty of the subject and the wide range used "(Jalalian 2011).

Sadoughi writes in his treatise: "The present treatise is entitled Civil Liability of Real Estate and Apartment Consultants, in which the civil liability of real estate consultants will be discussed in relation to the transactions through which they are conducted. Given that the discussion of liability In this dissertation, we have given a complete definition of real estate consultants according to the existing laws as well as the custom of the society, and whether these people only play the role of consultant only in drafting contracts. They act as intermediaries and act as brokers, and can the rules on brokerage apply to real estate consultants at all or not? By examining the bylaws approved in 1319, which consider real estate consultants as real estate brokers, and also in accordance with Article 1 of the Executive Instruction on how to issue employment specialization licenses for real estate and car consultants, this type of broker or intermediary can be introduced. He said the general rules of brokerage also apply to real estate consultants. However, with the special conditions of this type of brokers, as well as the principles of liability of these businesses have been discussed according to the theories of guarantee and fault, and to address the issue that these people have a direct impact on concluding contracts and typically "contractual liability" We will try to prove this, considering the fact that if there is no valid contract and it cannot be proved by the evidence and the UAE (requirements outside the contract) to what extent is the responsibility? And considering that usually "In some transactions, one of the parties suffers losses. How to compensate is another discussion of this dissertation. Also, since these people have a direct impact on the transactions, but according to current laws, the responsibility of the named is unclear. Therefore, with the help of other general principles of civil liability, the level of responsibility of the mentioned people should be explicitly specified.

However, considering that the preparation of deed and contracts is another action of real estate consultant, the nature of the type of regulatory contracts as well as the deed will be discussed in this dissertation. Sadoughi, Nasser (2013).

Validity of ordinary documents

Scholars and jurists have expressed differing views on the validity of ordinary documents in immovable transactions, and there has not yet been a consistent judicial procedure between the courts, although it appears that the courts have in some cases been consolidated and have adopted an almost fixed procedure.

The interpretations made by jurists and courts of Articles 46, 47 and 48 of the Law on Registration of Deeds and Property do not have the same unity. The Registration Law explicitly states that: "A document that must be registered in accordance with the above articles and has not been registered will not be accepted in any of the departments 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 practically value and accept ordinary documents related to real estate, while this with This material is contradictory.

Conclusion

Considering the existing laws in various international legal systems, especially in Iran, which has also been assisted by Islamic jurisprudence, it seems that with significant progress in all areas, the time has come that according to the law of all organs and the competent institutions and departments should take steps towards their legal responsibilities in order to facilitate the solution of the problems of their society and avoid the disputes. One of the important pillars of transactions is the intention to write, demand and accept, which can be presented in the affidavit as a written document and signed by both parties. Transactions are that the parties to the transaction do their business as they wish. According to some jurists, the signed documents are in the form of a written confession and they have considered its positive value more than testimony. What is certain is that the main root of our laws is derived from jurisprudence, and considering the jurisprudential reasons and human needs, the problem of the necessity or non-obligation of the affidavit should be removed and its compliance should be considered in the courts. And solve the existing problems once and for all by passing a law in this field. Because throughout human history, there are nations that have established a legal institution in the field of trade according to their needs, and the Sharia, according to human interest, has approved the vast majority of these institutions and banned them only occasionally.

Therefore, first of all, we must consider the affidavit as an ordinary document. Secondly, regardless of the title of the charter and affidavit, the text and the provisions contained in the written text should be the criterion for issuing judicial rulings.

Reference

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