



A Legal Justification of the Right of Holder to Refer to Accommodating Party

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ABSTRACT

Background

Unlike some legal systems - which consider the transmission of debt to be independent of the effect of the cause - and even if it proves to be compatible, it recognizes the cause according to some rules of Islamic jurisprudence and the general rules of civil law, Is considered as one of the pillars of any legal action. If the acceptor's acceptance is proved to be accommodating, this acceptance is considered invalid. In negotiable instrument law, in full compliance with the jurisprudential point of view in the relationship between the holder and the Accommodating party, there is a significant deviation from the general rules mentioned, and that whenever it is signed and handed over to the holder, the accommodation of accepting by the acceptor is not hearable.

Ethical Considerations

Honesty and fidelity in writing the text have been observed.

Findings

An examination of some jurisprudential institutions in which the Holy Shari'a has introduced persons solely out of sincere trust in the appearance as entitled, such as the principle of authenticity, Yad assumption, apparent agency, and the principle of correctness. They show the obligation contained by accommodated acceptor - which the holder has. In good faith, it does not contradict the jurisprudential rules and general rules of civil law.

Conclusion

The holder of the negotiable document he has read has accepted, apparently trusting the signature created by the acceptor. Therefore, it has the right to refer to the instrument's signatory, who played an influential role in creating such an appearance, to claim the instrument's amount, regardless of the invalidity or the absence of a primary relationship.

Key words

Holder, Instrument, Bill of Exchange, Appearance, Accommodating Party.

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INTRODUCTION

As a general principle, the obligation arising from a negotiable instrument, including the issuance, acceptance, endorsement, and guarantee, is preceded by the previous basic relationship (the original, primary relationship), which is called the basic relationship. Before issuing a check and promissory note, there is at least one primary relationship. Before issuing a bill, there are usually two basic relationships in which the persons involved have entered into a new relationship to settle them in a certain way is called an instrumental relationship. For example, after the occurrence of one or more basic relationships between two persons A and B, such as the purchase of sugar, rice, and wheat, etc., one or more instrumental relationships may be formed, including issuance, acceptance, endorsement, and guarantee, as the case may be. However, it is also possible for one or more instrumental relationships to develop without one or more basic relationships, such as issuing and accepting an accommodated bill of exchange.

The simple scheme of the problem is that in a normal trading relationship, "A" gives a negotiable instrument like "B" to "C" by buying the goods instead of paying the price, which he receives from "B," There are three legal relationships here: In a legal relationship, "A" in exchange for the sale of goods is the amount of ten billion dollars from "B" creditor who is supposed to

receive the price on a specific date (primary relationship). In another legal relationship, "A" owes ten billion dollars to "C" in exchange for the purchase of several goods, the price of which is to be paid on a certain date (primary relationship). In the third legal relationship, "A" e in order to receive his claim from "B" and pay his debt to "C," issues a bill of exchange of the amount mentioned to "B," the debtor of the first transaction and in the case of "C," the creditor of the second transaction. In the fourth legal relationship, "B" for the payment of her debt to "A" accepts the bill issued by "A" in favor of "C."

The question that arises is whether the creation and perpetuation of a document relationship necessarily require the existence of a basic relationship between "A" and "B"? According to the accepted view in some legal systems such as Germany and Switzerland, contracts between persons are created independent of the cause's effect, and the cause is not considered one of its pillars [1]. The transferring of immovable property is realized by the obligation to transfer and by using a contract of transfer of the real rights by its conclusion and registration with the notary public [1]. This is the case of a negotiable instrument. Moreover, as soon as the debtor signs or seals on the bill as acceptance with any intention, without really intending to transfer the debt to him, he cannot refuse to pay the instrument to the holder because it was an accommodated bill. Therefore, according to

this view, the acceptor's commitment is generally not affected by the absence of a basic relationship. Conversely, according to the general rules of Islamic jurisprudence and civil law's generalities, the cause is one of the contract pillars. In legal practices such as guarantee, sponsorship, mortgage, and remittance, which are subsidiary contracts and are preceded by debt, the debtor can sue the creditor for lack of intention. Thus, according to this view, unrighteousness, and oppression are never the source of the right, and the binding obligation on the negotiable instrument is affected by the lack of a basic relationship.

Therefore, whenever the holder refers to his transferor and in cases where the holder, despite being aware of defects in the relations between the instrument members, transfers it from the previous holder and its money from the persons in the relationship. Has an indirect document with them, demand, the flaws in the basic relationship between them will be heard. In the above two cases, the legal doctrine is fully consistent with jurisprudence and civil law's fundamental rules. The reason for this view is that whenever the instrument is in the possession of one of the parties to the basic relationship, he is informed of the fate of the legal action on which the instrument is based, including invalidity, non-influence, termination or revocation, so that otherwise There is no way to prove it.

MATERIALS AND METHODS

This research method is a descriptive-analytical one.

DISCUSSION

Most systems of negotiable instrument law have chosen a middle ground between the two perspectives: in the relationship between the immediate recipients of a negotiable instrument such as the maker and the acceptor, the endorser and the transferee, the maker and the first holder, the instrumental relationship, is affected by basic relationships. Although the Commercial Code does not explicitly state anything in this regard, from the point of view of legal doctrine, the protection of commercial money and the facilitation of its favorable circulation in the case of persons between whom a direct instrumental relationship is established becomes invalid in the face of the original relationship[2].

If the instrument has a person other than the parties to the basic relationship, which proves that he/she was aware of the defects mentioned in the legal action based on the instrument's operation when receiving it, such person is considered to have no good faith. In this case, the buyer and issuer, endorser or guarantor of the bill of exchange, promissory note, and check, as the case may be, can refer to the above defects and objections in the basic relationship against the holder of the instrument because the obligation contained in the instrument is based on a legal relationship. Created and its validity follows

from the same legal relationship, and unfair possession or misuse has no legal justification.

Since the primary purpose of commercial law, especially Combiail law (**Driot Cambaiare**), firstly and practically, is to ensure "speed" and "order." One of the means of achieving these two purposes is to neutralize the effects of previous and subsequent relationships to maintain the integrity of the obligations caused by negotiable instrument [2]; the principle of "Inopposabilty" has been proposed to strengthen the position of negotiable instruments against banknotes in operations on the Combaial instrument, including acceptance [3]. Therefore, if it is an accommodated bill of exchange and has no origin, however, it is circulated in commercial transactions and covers the price of several transactions, the acceptor cannot recourse to the defect and objections in the basic relationship against the holder - who is unaware of the accommodation and has good intentions, and to avoid the burden of paying for the instrument.

Although due to the conciseness of the legislator, the authors of commercial law have deduced this principle from Articles 230, 231, 249, and 251 of the Commercial Code [6], different judicial opinions have been issued in this case: While in some opinions, the claim of the holder who had a relationship with the signatory through an intermediary has been condemned to be rejected [4], in many opinions, the principle

of opposability has been respected [5]. There are rules and regulations in combiail law that are not seen as such, not only in civil law but also in traditional commercial law and even in negotiable instrument law in a general sense, to the extent that some call it "shock law"[6] because the provisions governing this part of commercial law to someone who has not correctly digested and understood it - because of the conflict that appears with the established rules of jurisprudence and civil law - It seems unacceptable and worries the writers of civil law and even traditional commercial law, and certainly reduces it to the concept of oppression in the eyes of a jurist who believes in religious principles because injustice and oppression are not the sources of right.

In this case, the conflict between the provisions of negotiable instrument law and the rules of jurisprudence and civil law is more pronounced when the holder-who has no direct relationship with the acceptor- is unaware of accommodation.

Most community transactions are based on trust in the appearance and act on the possessor's assumptions ownership and without the possibility of knowing the real owner. Since most people cannot discover the real owner, such a task is not prescribed by the Shari'a. Therefore, the holder of a negotiable instrument has transferred it from the previous hand by trusting the appearance created by the issuer, acceptor, endorser, etc., has the right to refer to them to receive the amount stated in the instrument.

Documenting this view relies on several institutions that indicate the apparent permission to be acted in Imamiah jurisprudence:

A. Yad Assumption

Yad- which means "hand" in the word - in the terminology of jurisprudence means domination over something and its importance, in addition to creating ownership in cases such as the possession of permissible and revitalization of mortal lands, is more evident somewhere → which has been introduced by the Shari'a as an assumption of Zulyad's (dominant) ownership of property. Due to the nature of the assumption- whose authenticity is in terms of discovery - it is assumed that there was a cause for ownership, although Yad can not determine its type and characteristics. For example, whoever holds the key of a house, the Shari'a recognizes him as the owner of the house, although this seizure cannot prove how the ownership of the house was obtained [7] Including the narration of Hafs Ibn Ghias in which Imam Sadiq (peace be upon him) was confronted with the question: "If I see something in someone's hand, it is permissible for me to testify that it belongs to him" While answering in the affirmative, he said: "... If this is not permissible, there will be no market for Muslims" [8]. In this narration, "Yad," which is based solely on domination and emergence and never definitively represents the truth, is introduced as a property assumption, and based on it,

permission is given to testify to the ownership of objects in the hands of persons [9].

Although according to Article 36 of the Civil Code, if it is proved that the seizure was not due to a legal reason, this protection of the trustor to appearance has been removed [10]. Article 35 of the Civil Code, adapted from Yad rule in Imamiah jurisprudence, Possession as the property has been introduced as the reason for ownership. This is because persons cannot know the real owner when concluding legal acts. Therefore, if a person enters into a legal act with another based on a credible appearance and after the necessary investigations based on this appearance's correctness, the appearance cannot be denied to such a person by discovering the opposite of appearance [10]. The negotiable instrument holder also received it from the acceptor, believing that his signature on the instrument was correct.

B. Apparent Agency

Agency, which is one example of delegations, has also been somewhat influenced by such an attitude. Unlike most contracts - which are bilateral and involve only the parties - the agency involves a tripartite and sometimes even quadrilateral relationship so that its effects, in addition to the two main parties, involve other persons.

Unlike an actual agency, which is based on the principal's pretense against the agent, to declare consent to adhere to the contract

concluded by the agent, the apparent agency is to pretend, directly or indirectly, of the principal to the third party, is made on the consent to the commitment of the contract concluded by the agent.

There are two main different views among jurists about the effect of the principal will on the dismissal of an agent in ending the agency relationship: A group of jurists believe that the acts performed by the agent on behalf of his principal have legal effect if he is satisfied. As soon as the principal declares his will, the dismissal is effective without informing the agent. In this case, the agent loses the authority to implement the agency's provisions. Therefore, dismissal of an agent does not require his knowledge, as it is not subject to his consent [11]. In this case, after the dismissal of the agent by the principal, any of his acts regarding the subject of the agency is considered as prying.

Several reasons have been cited in justifying such a view: Firstly, dismissal, like resignation, is essentially a kind of revocation [12] as one of the jurists has called the dismissal of the agent and principal in both cases revocation [13].

Moreover, since the termination of the agency contract has no character compared to the revocation in other contracts, the declaration of the principal's will to dismiss [14] alone is enough to end the agency contract, and no other activities such as announcing it to the agent or witness are

necessary. Secondly, the expediency requires that the principal's will to revoke it alone be sufficient, and the obligation of the principal's obligation to inform the agent causes the nature of the said contract to become a necessity [12]. Thirdly, since there may be expediency for the principal to dismiss and forcing him to announce it to the agent or witnesses may cause him harm [15]. Article 186 of the Civil Code also uses revocation for the possibility of breaking revocable contracts. On the one hand, Article 678 of the said law mentioned the dismissal of the principal as one of the methods of expiring the agency. On the other hand, the first part of Article 679 of the Civil Code is drafted in such a way that it is as if the dismissal is one of the matters in which the existence of the principal's will alone is sufficient, and no other act is stipulated in its application, as stipulated. "The principal can dismiss the agent at any time ..."

On the contrary, some people think an agent is dismissed if he is informed orally or through reliable news.

Moreover, an agent who is unaware of his dismissal has the right to assume the agency's survival, and if the subject of the agency is done, his legal act about the principal is considered valid. The reason for this is to prevent the agent from losing. They cited several reasons to prove their claim:

Firstly, although in other contracts, revocation is effective only by the will of

one party and without the need to inform the other, the existence of the Shari'a prohibition prevents the effect of the principal's will on the revocation alone [16].

The meaning of forbidding the Shari'a is the existence of successive narrations of Jabir Ibn Yazid and Mu'awiyah Ibn Wahab [17], Hisham ibn Salem [18], and Ali Ibn Siyabeh [17] from Imam Sadegh (peace be upon him).

Secondly, since the uninformed agent is excused from dismissal by the Shari'a [19] and the wise are considered without duty when performing the agency [19] has the right to assume the survival agency relationship between himself and the principal. Hence, his legal possessions are valid for the principal [20]. Thirdly, the non-necessity of announcing the dismissal may cause the agent to lose, so that the agency is terminated at the will of the principal alone, and the agent, unaware of his dismissal, enters into a transaction with a third party. In case of refusal of the principal's transaction, the third party may refer to the agent for price and damages, while the principal has benefited from the acts of the agent and is, therefore, more entitled to bear the loss [21]. In support of this view, a narration from Imam Sadegh (peace be upon him) has been cited in which the phrase "fixed agency" has been used to describe the status of the agency contract before the agent informed the principal of his dismissal.

Also, in explaining the above narration, one of the jurists, in cases where the agent, without knowing his dismissal, takes legal action on the agency's subject, has used the phrase "remaining agency" [12].

The holder of the negotiable instrument has also consented to receiving it, relying on the emergence of the relationship between the transferor and his predecessors. Therefore, his trust must be respected, and the right to demand the amount stated in the instrument must be recognized by the person who created this appearance.

C. The Principle of Correctness

The principle of correctness has been applied at all times and in all nations and religions and has been signed by the Shari'a, and its importance is such that its denial has been interpreted as disrupting the social system [22]. According to the principle of validity, whenever a person enters into a contract and doubts its validity, that contract is assumed on the correctness. Otherwise, it is necessary to investigate the preliminaries and how to implement it, contract, which is a difficult task [9]. According to some Sunni jurists, whenever the mortgagor seizes the mortgaged property and sells it after the mortgagor's permission, the mortgagor claims that he had rejected the mortgagor before the sale took place, the mortgagor's promise was accepted with an oath [23]. In other words, although the mortgagor is not authorized in his possession in the real world due to the mortgagor's revocation of

permission, his action is recognized as valid due to the apparent authority sale is valid. Accordingly, the holder of the negotiable instrument was authorized by Shar'a to trust the appearance created by the instrument's signature. Therefore, trust in such an emergence deserves support.

CONCLUSION

As a general rule, the exchange bill relies on the transaction between the seller and the buyer, which is issued to pay for the goods, purchased and called the trade bill. The issuance of such a bond appears in the issuer's debt and the holder's demand and derives its validity, value, and transferability from this fact and its place. However, not all acceptances indicate that a real business transaction has taken place, but maybe out of place and only accepted by the acceptor for credit. This bill of exchange is called the Accommodation bill, and the acceptor, without any debt to the issuer and intends to pay it, agrees to have a debt drawn on him so that the issuer - who is not in a good financial position, to be able to get credit, and by discounting it, get funds to continue working. The issuer of such a bill undertakes to pay the amount at maturity personally and withdraw it from the process. The holder of the acceptor's negotiable instrument is trusted to the appearance created by the acceptor, signature. Therefore, he has the right to refer to the instrument's signatory, who played an influential role in creating such an appearance, to claim the amount stated in the instrument, regardless of the

invalidity or the absence of a primary relationship. Although the position of Iranian commercial law on accommodating bills is not explicitly stated, most jurists consider it valid, at least in the case of a holder who has acquired it without malice.

ETHICAL CONSIDERATION

Authenticity of the texts, honesty and fidelity has been observed.

AUTHOR CONTRIBUTIONS

Planning and writing of the manuscript was done solely by the author.

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CONFLICT OF INTEREST

No conflict of interest was reported by the author.

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REFERENCES

- [1] Sanhoury, A.R. A., (1988), Theory of Contract, Vol. 1, [Untitled], Beirut: Al-Halabi Legal Publications, 1988, 385-7[Arabic].
- [2] Saqri, M., Commercial Law, Instruments, Educational Selection, 5th edition, Tehran: Enteshar Company, Tehran, 2008, 61-86. [Persian].

- [3] Kaviani, K., *Negotiable Instrument Law*, Tehran: Mizan Publishing, 1st edition, 2004, 86. [Persian].
- [4] Sokouti Nasimi, R., *Analytical Discussions of Negotiable Instrument Law*, 3rd edition, Tehran: Majd Scientific and Cultural Association, 2018, 120-3. [Persian].
- [5] Katozian, N., *General Theory of Obligations*, 6th edition, Tehran: Dadgostar Publishing, 2012, 274. [Persian].
- [6] Bahrami, Sh., *Lectures on Business Law, Master of Private Law, Faculty of Law, Shiraz University*, Collected by Esfandiari, Ahmad, 1996, 15. [Persian].
- [7] Mohammadi, A., *Rules of Jurisprudence*, 8th edition, Tehran: Mizan Publishing, 2004, 182. [Persian].
- [8] Hor'amehi, M., *Shiite Means to Acquisition of Sharia's issues*, Vol. 18, 1st edition, Beirut: Scientific Institute for Press, 1427, 215. [Arabic].
- [9] Mohaghegh Damad, S. M., *Rules of Jurisprudence, Civil Section 2*, 15th edition, Tehran: oloom-e Islami Publishing Center, 2007, 31. [Persian].
- [10] Karimi, A. & Alaa, M. *Legal Challenges of Goodwill Transactions and Its Effects*, *Quarterly Journal of Private Justice Law*, 4th Year, Issue 8, Fall and Winter 2017, pp. 9-27. [Persian].
- [11] Bahrani, Y., *Al-Hadaiyiq al-Nadharah fi Ahkam al-Etrah al-Tahirah*", vol. 18, [Untitled], Qom: Islamic Publishing Institute, 2003, 18) [Arabic].
- [12] Tabatabai Yazdi, M. K., *A Comment to Al-makaseb*, Vol.1, Qom: Ismailian Institute, 1997, 11. [Arabic].
- [13] Halabi, S. H. A. Z., *The Richness of Diversification from the Principles to the Branches*, Vol. 2 1st edition, Qom; Imam Sadegh Institute, 2007, 269. [Arabic].
- [14] Tosi, A. M., *Al-Mabsut fi Fiqhhe Al-Imamah*, Vol.2, Qom: The Islamic Publishing Institute, 2005, 342. [Arabic].
- [15] Ardabili, A., *The Assembly of Benefit and Argument in the Explanation of the Guidance of the Minds*", vol. 9, 3rd edition, Qom: Islamic Publishing Institute, 2006, 530. [Arabic].
- [16] Tusi, A. M. *Kitab al-Khilaf*, Vol.3, Qom: Islamic Publishing Institute. 1996, 342. [Arabic].
- [17] Ibn Babawiya al-Qommi, A. M., *Whoever Does Not Attend the Jurisprudence*, Vol.3, 4th edition, Qom: Islamic Publishing Institute, 2005, 83-4. [Arabic].
- [18] Tosi, A. J. M., *Tahdheeb Al-ahkam*, Vol.2, 1st edition, Qom: Ansarian Institute, 2005, 843. [Arabic].
- [19] Ardabili, A., *The Assembly of Benefit and Argument in the Explanation of the Guidance of the Minds*", vol. 9, 3rd edition, Qom: Islamic Publishing Institute, 2006, 530-41. [Arabic].
- [20] Helli Asadi, A. H., *Rules of Rulings on Knowing Halal and Haram*, Vol.2, Qom: Islamic Publishing Institute, 1997, 251. [Arabic].
- [21] Izanloo, M. & Mirshakari, A., *Dismissal of Agent*, *Journal of Islamic Law*, No. 91, Fall and Winter 2009, 60. [Persian].

[22] Ansari, M., Fareed Al-Usul, Vol.2, 5th edition, Qom: The Islamic Thought Collector, 2003, 720. [Arabic].

[23] Karki, A. Jame-o Al-Maqassed Fi Sharh-e Al-Qawaeed, Vol.5, 2nd edition, Beirut: Al-o Al-Bayt Institute for the Revival of Heritage, 2008, 162. [Arabic].

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