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COMPARATIVE STUDY OF SELLING CAPABILITY OF INTELLECTUAL PROPERTIES IN IRANIAN AND ENGLISH LAWS

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ABSTRACT

The article 338 of civil code has defined sale as the possession of the sold object in return of the determinate price, which is drawn upon jurisprudence. In other words, object is exchanged with the price. Since intellectual properties are not objects, there are certain doubts regarding their exchangeability. Legal experts have offered certain ideas for solving these conflicts and their most prominent ones suggest that the object mentioned in the article 338 is versus profit which has been mentioned in the definition of the lease and the law intends to separate sale from the lease in this way, however, we cannot accept this issue with utmost clarity. For the content of the article 338 considers sale correct when it includes a sold item which is an object. English law has also offerred a definition of sale in which there is no place for the inclusion of immaterial properties; while judicial procedure and the governing norms are against law. For studying the salability of intellectual properties we need to know the foundations of intellectual properties and their existential nature. Moreover, we need also to pay attention to the roots of intellectual property so that we can view this domain of law from an economic perspective.

Keywords: *Property, Object, Intellectual Properties, Property Conveyance*

INTRODUCTION

Intellectual property rights due to their dynamic nature and their close relations with globalization and commerce, are considered to be one of the most adventurous legal and economic areas in contemporary era. The importance of this issue is revealed when we see that today, one of the most prominent disputed areas among the developing and developed countries is the category of protection or non-protection of intellectual products and their scope (A group of authors, 2007). A group of scholars believe that intellectual works` rights or the financial rights resulted from the mental creations have their origin in ownership right. Among these scholars some are of the view that intellectual property rights are not ordinary property rights concerned with objects, rather this ownership has a validity and respect more valuable than the ownership rights of the ordinary material objects; because intellectual creations and the property rights resulted from them are the products of human rational and intellectual innovations which are functions of the character and spirit of the their creator (Emami, 2007). Some legal experts have interpreted the rights of the creator of the intellectual and mental work as a type of exclusive mentally posited personal right which have been codified for the protection of the interests of the creator of the intellectual work and are not

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considered to be among his properties and for this reason they cannot be transferred or inherited (Moshirian, 1960). Paying attention to intellectual properties and the process of legalization of this area in the level of international law has been started by the adoption of The Paris Convention for the Protection of Industrial Property in 1883. The formation of The Paris Convention consciously or unconsciously started the process of harmonization of the intellectual property rights in global scale. This process has undergone through numerous ups and downs so far. The ratification of the Paris Convention was followed by the adoption of The Berne Convention for the Protection of Literary and Atristic Work, The Rome Convention for the Protection of Performers, Producers of phonograms and Broadcasting Organizations, The World Intellectual Property Organization (WIPO) and finally the formation of the Convention of Trade – Related Aspects Of Intellectual Property Rights (TRIPS). These decisive events were associated with brilliant achievements for the process of harmonization of the intellectual property rights. The goal of these documents has been the formation of unique rules for regulation and protection of intellectual property`s right (Raeisi, 2009). Since intellectual property`s rights are essentially identical with the private law, it must find its place inside this traditional field of study. "Capability of intellectual properties" seek to find this place and takes sale or the mother of all contracts as its point of departure. The article 338 of Civil Code defines sale as follows: "sale consists of owning the sold item or object in return of the determinate price". This article has been composed of four key words: 1- Owning, 2- Sold item or object, 3- Price, 4- Determinateness of the price (Jafari Tabar, 2007). Among various philosophies of intellectual property, we should believe that intellectual properties are effects (exchangeable item) and can be owned by individuals. Given the fact that particularly in our law, the sold item must be an object, this issue is raised that whether intellectual properties are objective rights or not. The article 338 also seeks to express one of the extensions of the sold item. Moreover, given the definition proposed in the article 1 of English sale law, it seems that in this country, the salability of intellectual properties like our country is faced with the objection of ownability and exchangeability of these creations. The current study sought to explain various aspects of this issue in the context of national law as well as through the prism of the comparative study that is supposed to reveal the positive and negative aspects. By conducting this study, it was intended to cast light on the ambiguities of the laws and this in turn have provided the path for the adoption of new legal codes and at the same time the legal experts, judges and lawyers of the judiciary and relevant institutions have been able to get benefited from the results.

Ownership and Property

In civil law, ownership means the right of use, exploitation and conveyance of an object in any form unless in those cases which have been excluded by the law (Jafari Langeroodi, 2005). Property right in jurisprudence and civil law refers to a person's legal right for the possession of objects or properties or other persons (like maid and hired man) (Jafari Langeroodi, 1986). Ownership consists of a person's legal jurisdiction over other people's things or properties (Jafari Langeroodi, 1986). According to contracts` law and in the discussion of the property conveyance, it is suggested that "ownership is an objective right that belongs to material objects and can be transferred to another person based on an ownership contract" (Katoozian, 1997). Among these definitions that have been offered based on the existing realities in the transactions, the following rule has been derived: "Property in a contract represents a right

which is conveyed to others through the contracts". However, we need to know that in contemporary law, property is an extensive notion (Katoozian, 2004). After Industrial Revolution and particularly the emergence of publication industry a new set of properties came to existence (Habiba, Lecutre Notes of Industrial Property) which though they lack any dependency on the external objectivity and appearance in the world of mind and human thought, they constitute a huge number of the properties (Shahidi, 2001). Ownership in the English law refers to a set of rights as regards the use and advantage of a property and these rights include: property conveyance to another person either via inheritance or through another way like sale. Ownership in general sense represents the rights of the owner of a property regardless of this owner's being forced to take advantage of his own property (Ellis, Webster's new world). Owner is the man who has the legal right for ownership or conveyance of property to another. Ownership is hardly defined despite the attention that has been paid to it. This term like many English words, might have different meanings. Thus, for better and precise understanding of this term, we need to refer to the text.

Contract and Similar Notions of Conveyance

Article 183 of Civil Code suggested that: "A contract is made when one or more persons make a mutual agreement with another one or more persons, on a certain thing, and that agreement is accepted by the latter person." In legal terminology, it is said: "a contract represents the mutual agreement of one or two person for creation of legal effects" (Katoozian, 1997). Shia jurists have different notions of contract. Some jurists have defined it as "a mutual commitment" (Hosseini Shahroodi, 1989)[1], while some other jurists have construed it as "a person's commitment for taking part in general affairs including financial affairs" (Musavi Boujnurdi, 1992). In jurisprudence, it has been noted that "contract refers to affirmation and acceptance, whose legitimate effect will be demonstrated in its place" (Hosseini Haeri, 2001).[2] Lexical meaning of contract includes commitment, ownership, financial, non-financial, exchanging and non-exchanging contract as well as the agreements that are sealed for the sake of negation of an existing effect and the article 754 of Civil Code has been used in such an extensive manner. Since settlement as a term refers to the agreement in an absolute sense and in short every type of agreement that does not have a title of one of the determinate contracts is a settlement, the latter itself has not been part of the determinate contracts in Islamic jurisprudence (although some of the aforementioned jurists have been interested in the inclusion of it among the determinate contracts but they have not succeeded). The civil law has not also taken any action for including it among the determinate contracts and the term settlement in the opening of the article 752 still refers to agreement and the Islamic Shariah and the legislator of the Civil Code have not changed the verbal meaning of the term. Compact is an equivalent of the contract and the difference between these, lies in the fact that latter refers only to the determinate contracts, while the former also includes the indeterminate contracts either (Hosseini Haeri, 2001). One of the ways through which the property conveyance takes place is transaction and this needs to be studied. "Transaction" denotes a bilateral action in which one side is the transactor – the one who acts – and the other is benefactor – the one who accepts the transaction. The observation of the verbal structure of the

[1] "فان العقد عباره عن شد احد الالتزامين و عقده بالاخر" ,

[2] " ان العقد هو ارتباط ایجاب بقبول علی وجه مشروع یثبت اثره فی محله"

words "transaction" in the article 259 of Civil Code is considerable.[3] One might say that contract in civil law of Iran is used for establishing financial and non-financial contractual relations but "transaction" represents a contractual relationship that is of a financial aspect. However, since transaction has been used in the Civil Code in a specific sense, it seems that the legislator during regulation of the civil law has used the words "contract" and "transaction" in the same sense and the conjunctive preposition "and" is used between "contracts" and "transactions" for more explanation. In English legal literature, the terms contract and agreement are used in different ways. According to one of the most renowned legal dictionaries in English, the term contract has been used in different senses. Some English legal experts have defined the term contract as follows: "contract consists of an obligation or a set of obligations which are considered to be binding according to the law" (Chitty on contract, sweet Maxwell, 1968). Some other legal experts have offered the following definition: "contract can be defined as an agreement between two or more individuals, which is legally binding" (Duxbury, 1994). Contract has agreement as its opposite, which is defined as: 1- a mutual understanding between two or more persons regarding the relevant rights and obligations which come to existence before or after the operation; 2- real commitment of the parties based on the price that is paid in return of the exchanged item. The major reason of those opponents who believe that there is no ownership contract in Iranian law rather all contracts are based on convenant, is the definition that has been offered in the article 183 of Civil Code: "A contract is made when one or more persons making a mutual agreement with another one or more persons, on a certain thing, and that agreement is accepted by the latter person." This definition has been derived from the article 1101 of French Civil Code. "A contract is a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations". This definition includes the sale contract, too. Therefore, sale contract, according to this definition, is a convenantal or agreement based contract and the difference is that its subject is one's obligation of property`s conveyance. Some other legal experts even take further step and argue that there is no record of the use of ownership contracts in Shia jurisprudence, which is the basis of civil law (Jafari Langeroodi, 1985). Rather the theory of ownership has made its way into the Shia jurisprudence through Sunni jurisprudence and has been used by a number of illiterate people like the lease contract, which is one of the obligations and is known as the profit ownership (Jafari Langeroodi, 1996).

Sale Contract

Sale is the most important and prevalent type of determinate or nominate contracts and thus it is called the mother of all contracts. No one is needless of it in his life and contractual relations with others, thus this contract has been widely noticed by the legislators. In international trade, sale is also the most key contract and many international conventions have been regulated and adopted as regards it. One of these conventions is UN Convention on International Sale of Goods adopted in 1980. In Islamic law, this type of contract is studied in the works concerning sale, businesses and trade and even most of the general regulations of contracts are analyzed under the same title (Qabooli Derafshan, 2007). Civil Code in the article 338 has defined sale as owning an object in return of a specified price. This definition can be found in the Shia

[3] Article 259 of Civil Code reads: "When any property has been handed over to a third party by a seller who is not authorized by the owner and when the owner of the property does not give his con sent, the party who hold the property is responsible for the object and its usufruct."

jurists' works with some modifications. Some other legal experts believe that although there are numerous differences between the early and later jurists in the terminological sense of "Sale", the same definition proposed in the article 338 of Civil Code is what these jurists endorse together as the normal definition of the term (Haeri Shahbagh, 1997). Given the definition offered in the article 338 of the Civil Code, i.e. "sale consists of owning an object in return of a determinate price", it becomes clear that sale is a contract that is based on ownership and exchange and the sold item must be an object; sale contract is binding and is based on mutual consent. The existence of a price is one of the main pillars of the sale contract insofar as if in the sale contract the sold item is supposed to be handed over to the customer for free or the price is not paid to the seller; such conditions are against the nature of the sale and the contract is annulled (Adl, 1963). In English law, in the clause 1 of the article 2 of Sale Law, it is noted: "Sale contract is a contract based on which the seller conveys the ownership of the good in return of an amount of money to the buyer or agrees about such a conveyance". The exchange-basedness of sale contract is deduced from this definition. According to this definition, it becomes clear that the price must be "money", because it has been defined in terms of money. However, we should say that in English law and the judicial procedure, the price does not merely include the money rather part of the price can be in the form of good; even in this case the contract might be considered a subcategory of sale (Dobson, Sale of Goods and consumer credit).

Conditions of Veracity of Sale Contract

1- Intention and Consent of the Parties: According to this principle, every one is free to sell or buy or refuse to do either one of them and is free to choose his party. The seller and buyer are free to determine the conditions of the contract and arrange their legal relations in the way they want. However, no law accepts this freedom in an unconditional form because this itself prepares the ground for the violation of freedom (Haeri Shahbagh, 1997). In no legal codes of Iran in the field of literary and artistic works, the veracity of the contracts related to the conyeance of the material rights is contingent upon the observation of the formalities including the written form of the contract (Zar Kalam, 2009).

2- Legal Capacity of the Parties: According to the article 210 of Civil Code the parties must be legally competent to transact or be involved in a business. This legal capacity or competency is of two types: competency of enjoyment and capacity of fulfillment of a settlement. Capacity of fulfillment of a settlement refers to one's capacity of handing over the sold item or fulfiling an obligation. This is why the article 210 of Civil Code states: "parties must be competent for the the transaction" (Emami, 1973). The one who conveys an intellectual property (author's right) should have the required capacity for this and this capacity and conveyance lasts for 30 years and if the owner dies, this term lasts for 50 years.

3- Specified Subject of the Transaction: A transaction must have a subject that is undertaken or conveyed. The subject of a transaction might be a good that the obligor is obliged to hand it over to the obligee like being obligated to hand over a specified book or house. One's obligation of handing over a good is tantamount to one's obligation of conveyance of a property. The subject of transaction may be an action that the obligor is obliged to undertake it, e.g. someone is obliged to construct a house based on a specified plan for an obligee, or refusal of an action. In the contracts of conveyance of material rights of an intellectual propery, the specified

subject is an intellectual work which is conveyed to someone other than the owner of the work (Zar Kalam, 2009).

4- Legitimacy of Reason of Transaction: Reason of the transaction refers to the motivation that occurs in each one of the parties of transaction and causes the transaction to take place. Reason is the thing that each one of the parties conceives before the transaction in order to reach their goal. Therefore, reason is deemed before the transaction and it might be created after the transaction in the outside world (Zar Kalam, 2009).

Features of Sale in Engligh Law

One of the most important laws of England is the Sale of Goods Act. This act has undergone through numerous changes in the course of history. It took almost one century that the Sale of Goods Act to be adopted from 1893 to 1979. Several acts has been adopted in the interval whose impact on the latter act is undeniable. These acts include: Theft Act 1978, Supply of Goods Act 1973, Consumer Protection Act 1974 and Unfair Conditions Act 1977. Even after years of domination of the French Law over the majority of legal systems across the world, England is judging on the cases based on the common law. Thus, English law is a law based on judicial procedure and for this reason, we need to turn to the judicial procedure of this country in order to study the sale and evaluate the judicial cases as regards this single issue, according to which we can reach a unique stance on the sale in English law (Beh Mahra, 2008). Sale contract has been defined in several places of 1979 Act. One of these places is the clause 1 of the article 2 where we read: "A contract of sale of goods is a contract by which the Contract seller transfers or agrees to transfer the property in goods to the Buyer for a money consideration, called the price". This act is known as the Sale of Goods Act and we can easily understand that this act includes a sale which has goods as its subject. This issue has been mentioned in the clause 1 of the article 2. If we want to understand the concept of good in the Act 1979, we need to refer to the clause 1 of article 61. In this clause, it is noted that: " goods " include all personal chattels other than things in action and money, and in Scotland, all corporeal moveables except money ; and in particular "goods" includes emblements, industrial growing crops, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. In English judicial procedure[4], consideration does not merely include money rather part of the consideration can be in the form of goods. Thus, in those cases that consideration is composed of money and other goods, the contract can be still a sale contract. In such a case, there is a "money consideration" even if it is associated with good (Gordon, borrie, commercial law).

Intellectual Property

Intellectual properties today play a vital role in the economy and stable development as well as the knowledge production. Some of the legal experts consider the term "intellectual properties" to be suitable and believe that the spiritual denotation of this term refers to the ideal content of these properties versus the material and formal properties, while the origin of these rights include human ideas, thought and intellection (Emami, 1992). Some other legal experts believe that the term "spiritual property rights" is better and contend that not all subjects of the spiritual property are resulted from the thought rather some of them only due to their lack of material existence, are included in this category like the good-will right (Vesali, 2000).

[4] www.england-procedure.com/pth/145.

Intellectual property rights have been defined in few cases by the professors of law in their works. The majority of these professors prefer to show the nature of these rights via enumerating them. While the identification and acceptance of the rights of ownership of material properties have developed slowly for a long time, intellectual property rights which are a subcategory of the private rights in general are relatively newer inventions (Lester, 2004). Nevertheless, today the scholars and activists of the field of knowledge and information production struggle to choose the traditional form of property right for the protection of knowledge producers via identification of the foundations of property right and exclusive rights of knowledge producers and they have been successful in this course. In a universal classification, we can divide the private property rights into two general classes: Rights-based Theories and Utilitarian Theories. The rights-based theories are deontological protection-based theories and they are known in most cases as "Natural Law Theories". England should be considered as the first country that has taken concrete steps towards the condification of rules and law for the proection of literary and works. Copyright in the sense that is known in England, has its origin in sixteenth century. At the beginning, the courts considered certain formalities necessary for the protection of the books. In 1556, the system of registeration of books was founded by Stischner company so that the rights of authors could be protected in this way. If an author registered his book in this company, the permanent copyright of the book was endowed to him and no other author had the right to reproduce it. Although this method of protection was just used for books, it underwent certain gradual changes during the two hundred years. In 1709, the so called Engraving Copyright Act was adopted which was normally known as Hogarth Act. Accordingly, copyright protection was assigned to the publishing companies (Zarkalam, 2009). Legislation procedure in this area continued. Finally, the last impacts on the English copyright laws came on the one hand from the TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) 1994 and on the other hand, from European Instruction "Some Aspects of Author Right and Jaxtaposing Rights in Information Society", 2001. In fact, according to the article 10 of TRIPS agreement, the member states were obliged to protect the computer programs and European instruction 2001 was also concerned with the protection of author's rights in the context of electronic transactions and internet and the requirements of this instruction has been reflected in the "new copyright regulations" of England (Zarkalam, 2009).

Concept of Inellectual Property

The title "intellectual property" does not exist in an independent form and without the indication of the extensions in legal texts so that the effort for the acquisition of its definition have a legal benefit and we can apply it to the extensions. Then, if this term is used in the titles of some international institutions, it is either the name of an organization or its extensions have been clarified well (Hekmatnia, 2008). Intellectual Property in English law includes a set of intangible rights that are supposed to protect valuable commercial products which have their own origin in human mind. This set includes: commercial brands, copyright, author rights, and also commercial secrets` right, invention rights, moral rights and unfair competition rights. The aforementioned rights might be tangible or objective or like the nature of intellectual properties, they can be mental, e.g. those cases that are protected under the copyright law or commercial brands, achievements of the inventors or a commercial secret (William, 2003). An English writer commented about the definition of intellectual property as

follows: "When the term intellectual properties is indicated, it refers to ideas, inventions, discoveries, symbols, pictures, fine works like performance, theatre and music. To put it in a nutshell, everything that is a product of human thought is potentially valuable and if we want to summarize it in a word, we should say, "Information" (William, 2003).

Conveyability of Properties and Its Ways

Every property based on its nature might be conveyable or legally uncoveyable. However, properties based on their economic values are in most cases conveyable. Law has determined the cases where the properties lose their conveyability. Nevertheless, their enumeration is a hard work. Anyway, we must take it for granted that majority of properties are conveyable (Zar Kalam, 2009). Among the most important ways of conveyance, one can refer to the following: volitional conveyance and forced conveyance. The principle of conveyability of properties has not been stipulated in any legal code, but the totality of these laws suggests that a property's economic value becomes perfect when it is conveyable. The owner has the right to do whatever he wants with the property and can convey it to others (article 30 Civil Code). Objective right is usually created in this way. Civil Law has allowed the owner to convey the whole of his right to others via sale, loan, settlement and donation. He can also convey part of his rights and keep the ownership of the object for himself in the same way that in lease contract, the lessor allows the lessee to be benefited from the profits of the object of lease, while the lessor is still the owner, and by the same token in the partial profit right, the owner allows one to be benefited from part of the right (Safaei, 2005). In Iran's legal system, the permanent conveyance of property is done based on the articles 339 and 362 of Civil Code. However, the owners can restrict the scope of access of the owner or buyer against the content of article 30 of Civil Code by the inclusion of certain conditions; e.g. prohibition of the buyers of organizational houses from selling their properties for 5 or 10 years. Of course, such restrictions are based on the mutual consent of the parties as mentioned in the contracts. Among other restrictions of the principle of property conveyance, we can refer to the cases underlined in the law. For example, in some cases, it has been clearly mentioned in the Civil Code that certain conditions can make a transaction illegitimate and no conveyance would happen accordingly (article 217 and 218 of Civil Code). In other words, the reason of the transaction is an immediate goal that if it did not exist, the transaction would have never taken place (Katoozian, 2005). In English law, convey refers to the volitional act of transferring a financial right or profit, which usually takes place in written form. Of course, any conveyance via bequest is done via force (Wild E., Susan, Websters new wor, law dictionary). In immovable properties, this conveyance includes volitional and complete conveyance of properties (including object and profit) via donation, sale and the like, from one individual to another (Wild E., Susan, Websters new wor, law dictionary).

Principles of Conveyability of Properties

Properties are generally taken to be conveyable as a principle and unconveyability is an exception, which has been clearly stipulated in the article 30 of Civil Code: "Every owner has unlimited rights of Occupation and exploitation over his property in matters in which the law has made an exception". Even we can argue that the article 31 is in one sense and endorsement of the article 30: "No property can be alienated from the possession of its owner except in accordance with a legal order". These two articles are based on the principle of absolute possession in Islamic state which cannot be denied unless via the order of law. Even the

Principle 47 of Constitution states: "Legitimate ownership of every citizen must be respected under the specified legal regulations". Accordingly, the owner has the right to occupy and exploit his own property the way he wants, unless it be against the law. However, there are still certain cases where the conveyance is not legal and in these cases there are restrictions that must be observed by the owner (Safaei, 2005).

Relationship of Intellectual Properties with Their Conveyability

There are various views regarding the nature of intellectual properties: intellectual properties as a right, John Locke's theory of ownership, Hegel's theory and the theory of leftists of intellectual property (Marx) copy lefts.

Conveyability in Immaterial World

Today, the procedure of the courts of common law system is applying the rules governing the immovable properties to cyber space, too. For example, in the United States of America, violation of the individual rights in cyber space is considered to be an example of trespass to chattels and the judges issue verdicts similar to those of the violation of immovable properties` rights.[5] In academic level, some of the distinguished scholars of intellectual property rights believe that if the rules of ownership are enforced in the cyber and digital space are enforced more powerfully, not only they are not impeding this space, rather it provides the ground for the development of the access of individuals to the digital information via creation of a system which promotes the independence of private companies through decentralization and flexibility (Merges, 2008). On the other hand, some of the scholars without discussing the type of right of inventors that can be property right or an exclusive right, believe that in some special cases particularly sin cyber and digital environments, the execution of this right is taken place in the form of the principle of responsibility more effective than the principle of ownership (Mark et al., 2007). According to this theory, all legal entitlements of individuals, are protected based on three types of various principles: principle of unconveyability, principle of ownership and principle of liability. The legal rights that are protected by the principle of uncoveyability cannot be conveyed even despite the consent of the owner of the rights. The legal rights that are protected by the principle of ownership can be conveyed to others based on the discresion of the owner of the rights and of course after paying the number determined by the owner. Thus, anyone who intends to acquire the right, must acquire it via the volitional transaction with the owner of the right and based on the agreed price. Here the government is not involved at all. If the buyer wants to pay a number less than the number determined by the seller, the owner of the rights has the right to veto the transaction and refuse from the conveyance. What is important in the principle of ownership, is the determination of the

[5] Having said these, there are also some cases where the verdict has been issued of the prohibition of violation of movable properties. For example, cf. eBay, Inc. v. Bidder's Edge, Inc., 100 F. Supp. 2d 1058, 1060–64, 1069–70 (N.D.Cal. 2000)

In this case the Bidder's Edge Inc sends spiders to eBay website in order to gather information. The court issued the verdict of the prohibition of the violaton of rights of movable properties.

Also in the verdict of Register.com, Inc. v. Verio, Inc., 356 F.3d 393, 404–05 (2d Cir. 2004) the court has ordered the prohibition of the violation of movable properties against the defendant who had used robots in order to have access to personal PCs.

Regardless of these cases most of the verdicts issued are based on the principles of violation to immovable properties. For further studies cf. Jacqueline Lipton:"Mixed Metaphors in Cyberspace: Property in Information and Information Systems", Loyola University Chicago Law Journal, Vol. 35, 2003,pp 236-7

primary holder of the right and the value and price of the right is not important. In the domain of the intellectual property rights, the scholars present their own analyses in two distinct levels and from two different perspectives by distinguishing between the type of right and its sanction. On the one hand and at the beginning, the analyses are concerned with the demonstration or refutation of the type of the protected right that can be the ownership right or an exclusive right and on the other hand and in the next step, the discussion is concerned with choosing[6] the appropriate principle for the implementation of this right, i.e. property right or liability right (Kieff, 2001). Justification of protection of a right in the form of property principle depends on the capability of the definition and effective execution of ownership right. The implementation of the ownership principle can be effective when the prohibition is compeletly in line with the protected right and only the act violating the right is prohibited. As to many of the markets of technology, particularly in the cyber environments, due to the incompatability of the issued verdict and the scope of the right, the individuals are banned from the actions that do not violate the intended right. Implementation of the principle of liability is more effective than the principle of ownership. The possibility of issuing the decision of prohibition in those conditions, where the court cannot easily issue any verdict that would set ban on the probited action, can be of deterrence value; because in these conditions, this company can ask for a higher number than the real damage resorting to threat and petition. On the contrary, the defendant will face extra restrictions and this will have serious negative consequences for the economic invention and growth.

Extensions of Intellectual Properties:

We may state that intellectual properties do not have a determinate scope and this is also due to their dynamicity. Everyday, new properties are registered in this regard and their domain is expanded everyday. Our goal of the latter title has been using several external extensions of these properties.

Geographic Signs

One of those cases that are considered to be part of the branch of industrial property is geographic signs. Geographic signs are a group of signs that are printed on the goods in order to show the geographic origin of the the good. These signs are used for distinction like trade marks (Philiphs, 2002), but there is a difference here that the registered geographic sign is not changed to a generic name and it is permanently protected. Geographic signs due to the qualitative relationship of the product with the geographic region, are divided into three groups: 1- Indication of Source/Lindication de Provenance, 2- Geographic signs in special sense, 3- Appellation of Origin/Appellation D'ovigine.

Trade Secrets

Since time immemorial, humans have always sought to hide their precious information through which an economic or military profit would be achieved. Thus, the first official protection of trade secrets took place a millennium earlier than other branches of the intellectual property and this was the Roman Empire that by accepting the Actio Servi Corrupti allowed the masters of the slaves to prosecute those who forced the slaves to reveal the trade

[6] Various discussions have been offered concerning the measure and basis of choosing the property right and liability right in different legal areas including property right, contracts rights or liability principle among which we can refer to the measure of transaction costs.

secrets of their masters by bribing or threatening. In this case, the party who lost the dispute, was forced to pay the damages resulting from the revelation of the information (Mergers et al., Intellectual Property in the New Tehnological Age). Trade secrets can be defined as follows: "Information whose revelation will allow the rival to incur damage to the owner of the information via acquisition of profits" (Habiba, Lecture notes of Industrial property rights). Of course, these information must have economic value and to be unknown and some measures have to be adopted for their protection. Revelation of information whether in legal form or illegally through information theft or reversed engineering, is tantamount to the end of the legal life of a secret. Article 64 of the Law of E-commerce notes: "For the sake of protection of the legal and legitimate competition in the context of electronic transactions, illegal acquisition of trade secrtes of the economic businesses or their revelation for a third party in the electronic environment are considered a crime and the convict will face the punishment mentioned in the law". The sanction of this article is mentioned in the article 75[7] of the same law; these two articles along with the article 65[8] of the latter code are the most important legal texts in the field of trade secrets which are concerned with the short expression of this issue in the context of the electronic trade. The question that is rasied here is that given the area of e-commerce law, can we use the aforementioned issues in contexts other than e-commerce? In answering this question, we must take it into consideration that these sentences include two different wills of the legislator. In the first part, the right has been expressed and in the next part the sanction for the violation of the right is mentioned. This is a heavy sanction that has a penal appearance. No doubt given the principles of the penal law, like the principle of legality of crimes and punishments and limited interpretation of penal discussions the dialogue concerning, the expansion of the sanction to somewhere outside the domain of trade secrets does not seem appropriate; however, there is no problem if we use the first part of the articles 64 and 65 of this law in non-electronic fields because e-commerce does not have any special feature that cannot be found in other types of commerce and we cannot restrict the protection of trade secrets to it. Only due to the sensitivity of the electronic context, the legislator has determined heavier sanctions. The sanction of other fields is based on other existing legal codes, particularly the first article of the law of civil liability.[9] Of course, the aforementioned articles are not perfect and for their explanation, we must refer to the principle 167 of Constitution as well as the doctrines and theories of the legal experts.

System of Protection of Trade Secrets

Given the definition offered in the article 65 of the law of e-commerce and the ideas of the legal exprts, the system of protection of trade secrets includes five elements: 1- existence of

[7] Article 75: Violators of the article 64 of this law and everyone who tries to have access to the trade secrets of the rival in order to incur a damage in this way to the commercial, industrial, economic and service businesses via violation of the contracts will be sentenced to jail from six to two and half years and 50 million Rial fine.

[8] Article 65: Trade secrets are data messages including information, formula, patterns, softwares and programs, tools and methods, techniques and processes, unpublished works, methods of commerce, techniques, plans and procedures, financial data, list of customers, commercial projects and the like that shave economic value as such and are not accessible to the public and intelligent actions are taken for their protection.

[9] Article 1: "Anyone who damages the life, health, property, freedom, honor or commercial reputation or nay other right of other people either by intention or due to a negligence he is liable before the results of his action and must repair the damages".

information, 2- their value, 3- unknown nature of the informantion, 4- inaccessibility, 5- effort for preservation of the confidentiality.

Nature of Trade Secrets

Trade secrets are considered to be properties based on the argument offered for other branches of the intellectual property because in the world, commerce has economic value and it is the money that decides everything. It is argued that if the trade secrets are revealed either based on negligence or via intentional plans and reversed engineering, there will be no legal protection of them (David Friedman "Same Economic of Trade Secrets Low"), thus no one can argue that trade secrets are not properties; because the economic value of the trade secrets depends on their confidentiality and it is this feature of confidentiality that is considered as property not the mere information. As long as it continues, the owner of the secrets can take advantage of them and as soon as they are revealed, they no longer have any economic value and there is no dispute over the information's being a property. But as to the ownership contrary to the ideas of a number of the authors who have considered all features of the ownership relation between the owner and trade secrets conceivable, we should say that it seems to be the other way round (Rahbari, 2009). The holder of the trade secrets does not have the right of prosecution regarding it because based on the latter right, the owner of a good can ask for it whenever sees one possessing it but the owner of trade secrets if sees another person taking advantage of his trade secrets, should first prove the quintuple conditions mentioned in the second clause and try to demonstrate the illegitimate access of the secondary user. To explain the nature of commercial secrets, one needs to state that although trade secrets date back to the early years of the formation of human civilization, legal protection of it started only in recent centuries and after the formation of modern states. These states have the right to interfere in some affairs in order to protect the public interests. One of the fields that these governments interfere is that of protection of trade secrets in order to preserve the public order that depends on the prevention of illegitimate access of individuals to confidential information. This becomes more vivid when we see that in the laws of some countries like England, trade secrets are studied along with such concepts as privacy under the category of confidentiality.

Intellectual Creations

We can divide mental phenomena or intellectual creations into the following fundamental types: 1- literary and scientific creations; 2- technical creations; 3- artistic and mustical creations and secondary creations (Emami, 2007). Protection of these creations is among the vital concerns of the intellectual property rights. Even international conventions like Berne Convention use the phrase "artistic and literary works" to refer to " whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geog-raphy, topography, architecture or science".[10] It is needless

[10] Clause 1, Article 3, Berne Convention.

to say that the scope of intellectual properties is wide and a comprehensive protection of the aforementioned cases requires a detailed plan part of which is assigned to the internal laws of the countries. Article 2 of the law of protection of Iranian authors, creators and artists considers the literary and scientific creations as a type of intellectual works. Although Iranian law has not offered any definition of the literary and scientific works (Emami, A., 2007), but we can achieve this vital thing through international society. One the most important protections made in the field of intellectual property is the protection of author's rights or copyright. As a definition of the copyright or literary and artistic property rights, one can state that literary and artistic property refers to the rights of the creator of the literary, artistic and scientific works and the publication of the work with his name and also the exclusive right of him in copying, production, presentation, implementation and exploitation of his own work (Amoozgar, 2004).

CONCLUSION:

Therefore, immaterial properties are those properties that do not have material existence in the outside world but the society has taken their existence for granted and the law has also recognized them. Legal experts have expanded the domain of immaterial properties and considered any financial right as a part of it. Thus conceived, one can state that all objective rights (save the ownership right which is considered to be identical with its subject, i.e. property) like the right of benefiting, right of sharing, right of debt, right of business or trade (good-will) as well as the intellectual rights (literary, artistic and industrial properties) are considered to be among immaterial properties (Almasi, 2006). In English law, the sale of these properties has been excluded from the title of goods and they cannot be subject of the contract of sale of goods. Moreover, according to the clause D of article 2 of Convention on International Sale of Goods adopted in 1980, the sale of this type of properties has been excluded from the convention. The reason of this lies in the fact that the aforementioned clauses in Engligh law are not considered to be "goods" in the special sense of the word (Safaei, et al, 2005). Even the sale of such cases as electricity and other forms of energy and generally speaking, immaterial properties that are not tangible and objective, has not been included in the definition of "good" in the English law and the clause V of article 2 of Convention on International Sale of Goods adopted in 1980, has excluded the sale of electricity from this convention (Safaei, et al, 2005). In Iranian law in the article 338 of Civil Law, the objectivity of the sold item has been mentioned as one of the conditions of the sale, but given this article, it seems that like English law, we cannot include the immaterial properties under the present definition. In Iranian law immaterial properties have not been explicitly excluded from the category of "object" like the English law rather Iranian jurists and legal experts have sought to replace property with the object in order to pave the ground for the inclusion of immaterial properties (Katoozian, 2004) among the property (Khomeini, 1998). It needs to be mentioned that the word "good" and also the term "object" in English and Iranian laws do not include work, services and profits. In English law, for the realization of the notion of sale, according to the clause 1 of article 2 of the Sale of Goods Act, there should be a good; the term good has been explained in English Law based on the clause 1 of article 61. This term includes all personal (movable) properties which are tangible and objective as well as the immaterial

properties like bonds, copyrights, assets and etc. Therefore, the sold item's being a "good" in English law is considered to be one of the features of sale. By the same token, the objectivity of the sold item in Iranian law is one of the features of the sale contract. The similarity of these two concepts (goods and object) lies in the fact that both of them include objects that are sensory and material and then the term "good" in English law is close to the term "object" in Iranian law. However, one needs to note that there is a difference between the English and Iranian laws in this regard to the effect that in English law the movable properties are not considered to be goods and for this reason, the law of sale of goods is not applied to them while in Iranian law, article 338 of civil code, not only includes the sale of movable objects rather it also includes the sale of immovable properties and estate. In English law, copyright is of merely financial aspect and the work itself is important rather than the author or the owner. Therefore, it is natural that the rights of the author (copyright) to be transacted like other properties so that the freedom of trade be guaranteed. Author does not have any privilege and like other players on the scene of economy and supply and demand, he plays his own role. Here exploitation and conveyance is possible in any form and the subject of the contracts of the author like other properties can be in various forms including sale. Intellectual rights have become very limited and conveyable. Therefore, copyright can be coveyed through a simple sale. Partial or general conveyance can be limited in view of time and space (Mohammadi, 2007).

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