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FEASIBILITY STUDY OF THE POSSIBILITY TO DENY ACTIONS AGAINST IRREVOCABLE AGENCY'S SUBJECT

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ABSTRACT

Agency is a permissive and revocable contract wherein the principal or the lawyer can rescind the contract whenever they want. Arriving at a stable and non-shaky contract is an issue that can be achieved in the light of the irrevocable agency. However, the principal can perform an action in irrevocable agency that leads to the annulment of the agency contract. For example, the principle may sell the goods of a lawyer whom s/he cannot depose, in which case the aforementioned contract is revoked. To prevent such an action by the principal, the condition "performing of no actions against the subject of agency by the principal" is applied. The present study aimed at investigating the permissibility of this condition and discussed it through taking advantage of a descriptive-analytical method. The study accomplishment signified the idea that the condition "performing of no actions against the agency subject" was amongst the partial right deprivation cases and that it was devoid of any fault hence permissible due to the axiom of the domination of setting such a condition.

Keywords: *Irrevocable agency, Principal, Lawyer, Deprivation of the right to take actions.*

INTRODUCTION

Agency is the contract by the cause of which one of the parties (principal) appoints another party (lawyer) as his deputy for getting something done (article 656 of the civil law). This is carried out within the format of a permissive contract and each of the principal and the lawyer can annul it whenever they want (as understood from the article 378 of civil law). Since the agency is based on granting of deputyship and delegation of permission, the permitting party (principal) can withdraw from his or her permission and the deputy (the lawyer and permitted) has the right to resign. This contract, like the other permissive contracts, is rescinded by the death and dementia and insanity, for cases that growth is envisaged as a credible condition (article 954 of civil law). Moreover, the agency is revoked when the subject of agency is destroyed or when the principal personally performs an action which has been the subject of agency or, generally, when s/he performs any action that is against the lawyer's

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agency such as when s/he personally sells goods that s/he had delegated to another person (article 682 of civil law) (Ghasemzadeh, 2008). The reason for the revoking of the contract is that agency means the principal's granting of permission to another person for performing something in a special case and this is not concomitant with the privation right by the principal himself. For instance, the lawyer's option for selling a land is not concomitant with the idea that the selling right is deprived by the principal. Therefore, the lawyer can perform the subject of agency himself or delegate it to a third party quite similar to the case that a person can sell or gift his own house even if he has delegated the sale of his house to another person or s/he can do it through another lawyer. Due to the same reason, conditioning the contract on the result and/or action and setting such a condition as the impossibility of the lawyer's deposition in the course of contract's fulfillment would not have any effect in this regard because the effect of the aforementioned condition would only be that the principal cannot depose the lawyer and that this is not concomitant with the principal's deprivation of the right to take action (Katouzian, 2011). To prevent this and also to give the lawyer peace of the mind, the condition "principal's taking of no actions against the agency subject" is applied in the irrevocable agency. This condition is usually stated in the notary public offices and in the context of the irrevocable contract in the following words: "the principal deprived oneself in the text of a collateral binding contract of the right to depose the lawyer as well as the performance of the agency subject and also the right to take any actions contradictory to and against the agency subject". The condition might be actualized within the format of such a condition as the desertion of any legal actions (restrictive condition) or within the format of the abortion of right and in the form of a corollary condition. The question that is raised here is that is this condition credible or not? The problem may arise from numerous sources such as the idea that the principle in setting the conditions is voidance unless a legitimacy of a sort is granted thereto and this condition's authenticity is yet to be explicitly stated. Or, it might be that the aforementioned condition does not include the privation right rather it is a type of the deprivation of the permissibility rule which cannot be aborted. Or, it is so that the deprivation of the civil rights is not authentic as explicitly stated in the canon and law. The present article has tried to find answers to all of the foresaid faults. The condition might be presented within the cast of the corollary condition (deprivation of the right to take an action) or within the format of the restrictive condition (commitment to the desertion of legal actions).

It is necessary to investigate the issue since the irrevocable agency has become one of the essential matters in transactions in the present era considering the emergence of the new needs in legal grounds. The ability to revoke an irrevocable agency contract through taking actions against the contract by the principal is an issue that practically renders irrevocable agency fruitless. Thus, setting such a condition is indeed the necessary condition to the complete advantage of irrevocable agency. So, it is necessary to explore the permissibility of the foresaid condition.

In regard of the irrevocable agency, reference can be made to the article written by Mr. Ghasemzadeh under the title of "irrevocable agency" which is published in Monthly journal of Kanoon (Ghasemzadeh, 2008). Also, irrevocable agency has been examined in an article titled "agency condition and lawyer's non-deposition condition within the format of collateral binding contracts" that has been printed in the monthly journal of nations' research (Panahi,

2016). Of course, the undertaken researches are not unique to these cases. In the course of these articles and the other researches, the condition has been succinctly pointed out but the principle of the permissibility of such a condition has not been studied in details as far as the author of the current research paper has searched.

The present subject revolved about the restrictive condition (commitment to the desertion of legal actions) and corollary condition (privation of the right to take action) and it struggled to see which of the aforementioned forms of the condition was most influential and which one was non-influential and what was the primary principle that could be used in the discussions in this regard?

A) Defining Agency Contract:

Literally, agency means delegation and transferring; in legal terms, agency is a contract by the means of which a party appoints another party as his deputy for performing an action. The effect of the agency contract is the granting of deputyship. Agency has even been defined in jurisprudential books as deputization in occupation (Jaba'ei Ameli, 1984) in such a way that the principal knows the lawyer's taking of legal action on his behalf as an action done by himself and allows him to perform occupations in the name and on the account of himself. This contract (permissive and revocable by both of the parties) means deputyship, surrogacy and permission on one side of which is the principle and on the other side is the lawyer who is chosen as a deputy for performing an action. Therefore, deputyship forms the essence of agency. The authority the lawyer is given to fulfill the agency depends on the principal's permission and it is on his behalf and the lawyer would have no independent right and power unless by the permission of the principal. It has to be noted that the granting of agency does not mean the principal's privation of his authorities; in regard of the agency subject, both the lawyer and the principal can perform the agency subject because delegation includes giving representativeness right to another person in an issue and the principal himself cannot be deprived of the right to take an action in regard of the agency subject. So, the principal can himself take measures in line with getting the agency subject done and/or delegate it to a third person quite the same way that when a person delegates another person to the selling of his house, he himself can also sell it and/or gift it and/or perform it by another lawyer. Due to the same reason, it is stated that the principal's performance of the agency subject is one cause of its dissolution (Emami, 2008, 4, p.110). This contract is of permissive type, hence there is a need for the existence of volition in its creation and persistence. This way, if a factor like death or dementia occurs to any of the parties, the aforementioned will and permission would be destroyed and this would cause the cancelling of the contract. The question is that can it be accepted that the deputy and the permitted person could have authorities that the principal and permitting person not consider the vicariousness and permissiveness of the agency contract? How can a contract be vicarious and the existence of constant volition therein be deemed necessary, but the privation of the right to take actions against the agency subject be also considered influential? How such a contract is considered permissive and the continuation of the permission and volition therein is

justified when the principal's will is destroyed via setting such a condition as the privation of the right to take any actions against the agency subject?

It has to be stated in response that, first of all, the criterion in agency as well as deputyship contracts is the delegation and deputization time; thus, there is no fault in the issue in this regard because the lawyer has had ability and authority during the contract`s conclusion time. Secondly, it is true that the granting of deputyship does not mean the abortion of the principal's will and permission and that the principal has will even with the existence of the agency. It has to be noted that whether the privation of the right to take actions against the agency subject is amongst the imperative regulations and authentic in terms of its verdicts hence irrevocable or amongst the rights hence deprivable? As it is known, the emergence of such factors as death, dementia and insanity causes the revocation of the contract. Thus, it cannot be set as a condition in this regard that the agency can persist after death and dementia for the reason that the contract's revocation is imperative and ordained in the abovementioned cases and any agreement against it is unacceptable because, firstly, the reason introduced in article 954 of the civil law bars such a persistence and exception. Secondly, due to the interdiction of the principal, his expediencies necessitate the occupation by the other individuals. But, in regard of the deposition right or the deprivation of the action right, it was proved that it is more a sort of right considering the aforementioned cases. So, it is more a matter related to the disordering of an obligation but annulling or not annulling and deprivation of the right to take action is more a right. Therefore, the permitting party has the same authorities as the permitted party but he is committed within an in-contract provision not to make use of such a right or deprives oneself of such a right. On the other hand, it does not disrupt his will and its persistence because the deprivation of the right to take actions is not against the will of the principal and it is continuously existent but he has aborted such a right of his. Better said, privation of the right to take action does not cause the destruction of the principal's will and he only deprives oneself of the right to make use of such a will. Thus, the principal's permission and will are constant and the permissiveness of the contract is not flawed. However, the contract is dissolved in case that it is irrevocable and the principal is deprived of the right to take action if things like death, dementia and insanity occur in situations that growth matters. The reason for such an issue is the abortion of the volition, the continuation of which was stated to be necessary and it was also said that the contract is compulsorily annulled in such cases and no agreement against it could be reached.

B) *Introducing the Examples of the Right or Obligation Nature of the Action against the Agency Subject:*

1) *Methodology of Distinguishing Obligation from Rule:*

As it was mentioned, the main issue is that is it possible to deprive the right to take action or not? To figure out the issue, it is necessary to found out whether it is a right or an obligation. In other words, it has to be seen that the domination and the privilege recognized for the owner is a right or a permissible obligation solely in occupation? In more expressive terms, is this privation and abortion within an

individual's range of authority and will so that he can deprive oneself thereof or is it not within the authority range of the individual and it is more of an obligational nature? The right or obligational nature of this domination and permission for occupation can have different effects and results because the most important property of this obligation is the immunity of its domain from any violation by the subjective will of the individuals in transferring and abortion as well as its following of the expediencies and depravities of the subject about which the obligation pivots. Thus, the obligation cannot be aborted except by the subject's revocation or compliance whereas right, as commonly held, is an expedient possibility for transferring, conveyance and abortion and the objective and subjective will of an individual in respect to the subject of right plays a remarkable role in the justification and abortion thereof as well as in the constriction and expansion of its domain (Musavi Khomeini, 1983; Tabataba'ei Yazdi, p.57; Na'eini, 1, p.107, 1988 cited in Javer, the article on the methodology of distinguishing a right from obligation in the area of the women's rights, 2015).

One of the important challenges in distinguishing right or obligational nature pertains to their justification stage and identification of these two natures from one another in reality. It has to be noted that the ability to abort and transfer of a right is expedient, i.e. the abortion of right is permissible if there is no barrier. It means that it is not so that the abortion of right can be actualized in the entire law. In other words, actualization of the abortion of a right does not corroborate its being a right and it is not a canonical provision (Musavi Khomeini, 1983, p.27 cited in Javer, the article on the methodology of distinguishing a right from obligation in the area of the women's rights, 2015). To put it in other words, domination is the prerequisite to any right but this concomitance is derived of expediencies not as a perfect cause and the abortion of right and its delegation can be enforced in the absence of barriers not in all of the cases. Therefore, if discrepancy arises in regard of the present discussion and divestment of the right to take actions in irrevocable agency, how the doubts can be overcome? Is the right to take action deprivable? In response to this question, there are various criteria posited that have been pointed out in the forthcoming sections.

It might be asked that there is a sort of option in performing an action or leaving it undone in permissible things, so what would be the quintessential difference between right and obligation in respect to permissible matters? Is the right versus obligation conceptually and exemplarily the very concept of domination in the permissible things? The well-known response to this question is that right is indeed the very domination which is per se more of a relational nature and in opposite to the "obligational domination" (permission). The answer has been criticized in that domination which is amongst the dimensions of right not the right itself (Khorasani, 1989), while the effects and verdicts of a nature should not be originally defined as pillars of it in specifying any sort of nature.

It is stated by some others regarding the difference between the permissible things and right that if the source of leaving an undone action is the individual's authority,

a right is formed and if it is not stemmed from authority, it has to be named obligation (Hekmatniya, p.163, 2011). If it is made clear in a consideration of the language of the proof that the canonical ruler has given a person a relative ability or domination against a thing or another person, this canonical construct will be termed right but if the canonical construct does not cause privilege, ability and domination and only causes canonical ruler's permission and non-prohibition of performing an action or giving an action an effect or leaving it undone, it will be called obligation (Ghanavati et al, p.46 and Tabataba'ei Yazdi, p.55, 2000). This perspective has been reminded as the "theory of domination" by some (Hekmatniya, 107, p.157,2011 cited in Javer, methodological journal of distinguishing right from obligation in the area of the women's rights, 2015).

For the present case, considering the language of the proof and the contents of the domination axiom, it has to be seen that does this axiom solely convey permission or does it create privilege and domination for us? Is taking an action in the agency case an example of right that can be aborted or is it amongst obligational cases that cannot be aborted with it being impossible to set its privation as a condition? Recognition of this issue entails the methodology of distinguishing the right from the obligation in regard of this case. There are scales proposed for distinguishing right from obligation by the jurisprudents and fundamentalists. Some of them have been compared and investigated beneath:

1.1. *Paying Attention to the Language of the Proofs:*

If there are clues in the language of the proof indicating the right or obligational nature of a canonical construct, they will be applied and actions are taken correspondingly (Jarqou'eini, 2002). As an example, the language of this narration "*Li Al-Maqboun Hall Al-Aqd*" "the person suffering a loss can revoke the contract" speaks of a sort of right and the contents of the proof justify the right, hence it is ruled that this canonical construct is a right. But, there is a concrete evidence proving the opposite of the aforesaid narration and it is consequently considered not being apparently indicative of a right.

Using a little scrutiny in the documents of the domination maxim guides us to this issue that the canonical construct granted to a person speaks of an apparent right (Javer, 2015). Narrations like "*Enna Al-Nās Mosallatoun Alā Amwālehem*", "*Fa Howa Malahū, Yasna'a Behi Mā Yashā'a Elā An Ya'tihe Al-Mowt*" (Horr Ameli, 1989) and "*Enna La Sāheb Al-Māl An Ya'amal Bi Malehi Mā Yashā'a Mā Dāma Hayyan En Shā'a Wahabahū wa En Shā'a Yatasaddaqo Behi wa En Shā'a Tarakahū Elā An Ya'atihe Al-Mowt*" (Horr Ameli, 1989) and "*Sāheb Al-Māl Ahaqqa Bi Malehi Mādāma Fihe Shay'on Min Al-Rūh Yaza'ahū Haitho Yashā'a*" (Horr Ameli, 1989) signify that an individual possesses domination in these cases.

According to the idea that the content of the domination axiom grants domination and possession to an owner and not solely permission and since

the privation of the right to take an action is partially a consequence of this axiom and not in disagreement with this law, this right can be divested (Katouzian2009 and Ghasemzadeh, 2008). Like the privation of the right to depose, privation of the right to take action is not prohibited as explicitly stated in law. In this regard, articles 448, 474 and 822 as well as the article 679 of the civil law stipulate that "the principal can depose the lawyer whenever s/he wants, unless the inability of deposition has been set as a condition within a binding contract". In these articles, the impossibility of deposing the lawyer has been accepted in two forms: corollary condition (agency granted in a binding contract) and the impossibility of the deposition within a binding contract.

Therefore, according to the fact that the impossibility of deposing the lawyer by the principal is a civil right and its divestment has been accepted in the law, the privation of the right to take actions against the agency subject can be considered influential in a specific case of agency by the force of the axiom of domination and based on the criterion unity of this article.

It might be objected in this regard that the privation of right cannot be generally accepted corresponding to article 959 of the civil law. Thus, the privation of the right to take action might be also incorrect, as well. But, the answer is clear and evident because the privation of the right to take action is case-specific and special regarding agency and it is not an example of a general privation. Furthermore, its acceptance is the prerequisite to the freedom of will as well as an example of the domination axiom.

1.2. *Resorting to the Generalities and Applications:*

Another way of proving the right or obligational nature of this set of conditions is the narrations stated in this regard. The generality and inclusiveness of the aforementioned narrations like "*Al-Nās Mosallatūn Alā Amwālehem*" is expressive of this truth that the people have domination over their properties and can set conditions on them and, on the other hand, the general condition "*Al-Mo'menūn Enda Shorūtehem*" necessitates the influence of these conditions. Thus, resorting to the generalities and applications assists us in recognizing a right from an obligation with the explanation being that the generalities in transactions render it expedient for any condition to be effectual and its performance to be necessary unless the otherwise is proved and this is in proportion to its being of a right and no obligational nature can be discerned thereof.

On the contrary, it might be objected that if the principle of the justification of a right is doubted, resorting to the generalities for removing such an ambiguity is not correct because the application of the generality in an exemplary doubt is not permissible as explicitly stated by the fundamentalists (Khorasani, 1989). Resorting to the generality in the exemplary doubts means that in order to prove, saying, Zaid's knowledgeability, it is reasoned that the scholars are generally

knowledgeable. It means that there is doubt in the knowledgeableness of Zaid and the general rule of the most superior of the scholars can be used as a document to prove the knowledgeableness of Zaid and the removal of this ambiguity. However, if there is no doubt in the knowledgeability of Ziad but the veneration of a syntax scholar is doubted as to whether a syntax scholar is included by the verdict of the scholars' veneration or not, the general rule of the most superior scholars can be applied and the ambiguities can be removed. In the intended discussion, as well, if the right is doubted in its essence, resorting to such generalities as the axiom of domination does not remove doubt. However, if the right is proved as a fixed issue but doubts come about in the course of some of its effects, including the canonical possibility of the abortion or conveyance, the generalities can be employed for overcoming such a doubt because the generalities serve the elimination of such doubts and doubting the canonical impossibility of conveyance and abortion is equal to the doubt in the setting of a specific constraint on one of the exchangeable items and there is no doubt that generalities would remove such doubts (Imam Khomeini, no date).

In response to this problem, it can be stated that the generalities of such proofs as "*Owfū Bi Al-Oqūd*" and "*Al-Mo'menūn Enda Shonūtehem*" as well as the "axiom of domination" that literally includes the financial rights based on verbal implications point to the idea that any barrier and limitation in the exchangeable items and on the transacting parties' side is annulled unless the otherwise is proved. This generality is expressive of the fact that the canonical ruler has not set any conditions or constraints and it also reveals that the transaction is not contradictory to the verdict by the sacred canonical ruler. This absence of barrier in the setting of conditions is consistent with the prerogative nature of the affairs related to the transactions and not with their obligational nature. Thus, resorting to the generalities for proving the prerogative nature of the aforementioned affairs is not the resort to the generalities in the exemplary doubts rather it is the justification based on the generalities and expressing of their examples and, as it was mentioned, the generalities totally prove the prerogative nature of the aforementioned cases. As for the privation of the action right in part as well as in regard to the commitment to leaving any action undone contradictory to the agency subject, giving the transacting parties no such a right is in fact equal to the creation of limitation in their authorities and this is in opposite to the axiom of domination as well as the aforesaid generalities.

2. *The Prerogative or Obligational Nature of the Foresaid Condition:*

Some of the jurists exclude such a right topically from the rulings of article 959 of civil law (Imanian et al, 2003). Iran's civil law writers have offered various interpretations of the aforesaid article. This discrepancy can be attributed to the variegation of the term

"civil rights" in the legal literature. Civil rights specifically imply two sets of individual rights:

1) Relative civil rights that incorporate the rights and privileges stemming from the governance of law on certain legal situations and 2) absolute civil rights that encompass the general rights and freedoms pertinent to the human prestige that every individual mankind enjoys directly and absolutely and disregarding any other special legal situation solely for being a human being. In the contemporary legal literature, this set of the rights is also called the "mankind's civil rights".

The civil rights mentioned in article 959 as well as articles 957, 958 and 961 of the civil law have been stipulated for the absolute civil rights. Thus, by the cause of articles 957, 958, 959, 960 and 961 of the civil law, the Iranian legislator, meanwhile emphasizing on all the human beings' enjoyment of the rights and freedoms pertaining to the mankind's inherent prestige, has announced and ruled his support of these rights and have ordered that these rights and freedom can`t be deprived (Imanian et al, 2003). It is clear that it is absolutely impossible to deprive the human beings of the rights related to the human prestige as the characteristic of every individual mankind disregarding their legal situation.

But, the main point of the present discussion was that the aforementioned right is not amongst the cases related to the absolute civil rights rather it is amongst the cases of the relative civil right and it is partially debatable. Therefore, this article could not also deny the permissibility of such a conditioning.

C) Principle-Related Expediencies in Conditions:

1) Jurisprudential Investigation of the Principle in Conditions:

In regard of the permissibility of the aforementioned condition, it is necessary to investigate the expediencies of the principle in the conditions as to whether the principle is the non-effectuality and invalidity of the 1991, p.58) and any violation of this principle needs proofs. It is worth mentioning that the principle of invalidity has been governing amongst the jurisprudents till Mohaqqeq Thani's time based on the existence of no relationship between the parties which has been a sure fact until before the endorsement of a contract but the authenticity of the contracts found a larger number of supporters amongst the jurisprudents afterwards. The document presented by the individuals holding this theory is the verbal generalities like "*Owfū Bi Al-Oqūd*" and "*Ahalla Allah Al-Bay'e*" that are realized as governing the principle of no association (Mohaqqeq Damad, 1997).

In regard of the principle in conditions, as well, the jurisprudents believe in the idea that any condition that is not in contradiction to the book and tradition as well as the inherent contractual expediencies is correct and permissible (Shahid Thani, 2007). Therefore, if it is set as a condition within a contract that a divine obligation has to be left unfulfilled and/or a canonically unlawful action has to be done, it would be in opposite to the expediencies of the contract's essence very much similar to the condition set for the customer's inability of taking possession of the sale item which would be an invalid one. Of course, the invalid conditions are not unique to

these cases and Sheikh Ansari has also expressed all of its cases, but explaining all of them in details is beyond the present study's scope; however, the examples have been mentioned. The late Sheikh Ansari has outlined eight conditions for the accuracy of the conditions as follows: 1) be possible; 2) be inherently permissible; for instance making wine is an originally unauthentic condition; 3) be in the possession of intellectual intentions; 4) be non-contradictory to the book and the tradition; 5) be non-conflicting with the expediencies of the contract; 6) not to be uncertain; 7) not to be in need of an impossible thing and 8) be required in the context of the contract (Ansari, 1995). The result was that the principle in the conditions, as explicitly stated by the jurisprudents, is authenticity as far as the conditions thereof are authentic unless otherwise is proved. As for the condition for depriving the right to take action, as well, the principle is authenticity thereof unless otherwise is proved. Of course, it is possible in regard of this condition that something against the agency contract's expediency is proposed that will be dealt with in the forthcoming parts. The important issue, as was mentioned above, is the principle.

2) *The Legal Investigation of the Principle in Conditions According to Article 10 of the Civil Law:*

Disregarding the ĀYA "*Owfū Bi Al-Oqūd*" and the axiom of conditions, it might appear that it is amongst the conditions that gains influence and becomes authentic by the force of the principle of contractual freedom. But, it has to be seen "what are the contents of this principle and conditions of its implementation and the factors limiting it?" Then, a proper judgment can be made about it. The principle of the contractual freedom in our laws has been stated in article 10 of the civil law. The principle of the freedom of contracts has been declared in Iran's laws by the means of article 10 of the civil law which expresses that "the private contracts are influential in respect to those who have signed it in case that they are not against explicit regulations". So, except for the cases that the law has set barriers on the way to their effectuality, the wills of the individuals govern the destiny of their promises and the freedom of will should be accepted as a "principle". Of course, the influence of this contract is conditioned to its not being in opposition to the law (article 10 of the civil law). Therefore, if there is no contradiction in this regard with the law and canon and the imperative rules, the authenticity and influence of the condition can be ruled based on article 10 of the civil law and such a proof as remaining loyal to the condition, hence it can be considered superior to the principle of invalidity.

D) *The Expediencies of the Axiom of Domination and Adjusting them to the Aforesaid Condition:*

One of the sure jurisprudential maxims is the axiom that is sometimes termed as "domination axiom" or "dominion axiom"; but, in jurisprudential terms, it is also known as the axiom of control. The contents of this axiom are expressive of the idea that every owner has perfect domination over his properties and can make any sort of occupation, material and legal therein and nobody can bar him or her from such a

possession without canonical permission. In other words, by the cause of this axiom, the principle would be that the entire occupations and possessions are permissible for the owner unless the opposite is proved by the force of a canonical proof.

As for the axiom of domination, its document and implication should be discussed in two stages as to whether domination here means having control over only the properties or it can include the rights, as well. Of course, there is a discrepancy between the jurisprudents regarding its inclusion of a human being; however, since the discussion pertains to the rights, nothing would be presented herein about its inclusion of a human being.

This narration has been mentioned in the book "Bihar Al-Anwar" citing Awali Al-Ala'ei (Majlesi, 1983) and it has not been stated in any of the credible Shiite and Sunni communities. But, this document-related weakness can be compensated by the action of the jurisprudents because the majority of the jurisprudents have practiced it and decreed according thereto (Sheikh Tusi, no date). Therefore, the document of it is not flawed.

However, it can be stated in regard of the implications of the domination axiom and its territory that there is no disagreement about its inclusion of the properties because it verbally embraces the properties. As for its implication to the rights, Saheb Jawaher knew the aforesaid narration as inclusive of the rights (Najafi, 1988). The present study's author opined that the domination axiom also includes the rights and the mentioning of the properties in the narration serves the presentation of examples hence it should not be considered exclusively limited to them. On the other hand, the intellectuals' way of conduct, as well, is expressive of this same reality that the individuals have domination over their properties and rights and they can make occupations in them to the extent that the canonical ruler allows. Some found the contents of the narration as being nothing other than the intellectual's way of conduct and considered the aforementioned narration as being solely reflective of the very for-granted point believed to be true by the intellectuals (Bojnourdi, 1999). Of course, it is evident that the narration does not include the properties' verdicts because the verdicts made by the canonical ruler are not related to the properties dominated by an owner and the jurisprudents have explicitly opined their non-inclusion of the possessions (Ansari, 1995).

The justificatory aspect of the axiom signifies that the owner's control of his or her properties is his or her right which is an absolute one including any sort of occupation therein; of course, as far as the canonical regulations have not stipulated any prohibition and rejection. This purport, as well, includes and can be generalized to the cases of occupation and its time and continuation. The privative aspect of the axiom, as well, signifies that the other individuals' occupations in an owner's properties without his or her permission and satisfaction or the barring of interfering with their occupations are obligatorily and situationally prohibited. In obligational terms, interference and occupations by the others is prohibited and illegitimate and if the personal proprietary domination situationally causes abuse and interference, the interferer will be held liable to the compensation (Mohaqqeq Damad, 1997).

The result is that the owner's domination over his or her properties is his or her right which is of an absolute type and includes any sort of occupation in his or her properties but, of course, as far as there is not imposed any canonical inhibition and denial thereon. It is evident that the privation of the right to take action or commitment to leave any action undone in agency contract is an example of this axiom.

E) *Legitimacy and Permissibility of the Condition "Taking No Action against the Agency Case":*

It might seem that the privation of an action against the agency subject, whether in a direct or in an indirect manner, would be equal to the privation of the right for performing some of the civil rights (Emami, 2008, p.2). On the other hand, according to article 959 of the civil law, "nobody can generally deprive oneself of the right to enjoy or fulfill all or part of his or her own civil rights". Before responding to the abovementioned objection, it has become necessary to present a brief explication of article 959 of civil law.

There are rights granted to every individual to safeguard his or her continuation of social life. It is by the means of these rights that his or her legal freedom is ensured. The most important of these rights are possession right, marriage right, guardianship right, inheritance right and others that are named civil rights. To support the individuals' civil rights, Iran's civil law has prohibited them from generally or partially depriving themselves from the enjoyment and/or fulfillment of their civil rights.

Asserting that such a right is amongst the civil rights, the jurists have disagreements regarding its verdicts. In order to be able to more readily make judgments in this regard, differences have to be made between the privation of the right to take action in the form of the corollary condition and commitment to the leaving of a legal action undone (performance condition). However, the separation of these cases has caused discrepancies more in regard of the legal mandate for the violation of the condition and, except one idea, nobody else has made a distinction between the privation of the right to take action and commitment to the leaving of an action undone (Shahidi, 2000) As for the privation of the right to take action, as well, the jurists have made differences between the privation of the right to take action in partial and general forms and verdicts have been generally posited for each of them in separate. The late Dr. Emami has stated in regard of this article that "by 'generally", the above article means that nobody can deprive oneself of all of his or her civil rights or a special type of them in such a manner that s/he cannot take advantage of them. The civil law does not want to prevent anybody from the privation of a civil right or its non-performance in part, i.e. in a special case, using the word 'generally'. Thus, there is no fault in the privation of one's enjoyment or performance right in case that the law has not explicitly prohibited the privation of right in a specific case. A person can deprive oneself of the enjoyment and/or performance of a right that can be aborted because these two issues yield similar results" (Emami, 2008). As held by the late Dr. Emami, "a person can deprive oneself of the enjoyment or performance of a right that can be aborted for the fact that the results of them are identical and this is an example of the partial privation". Deprivation of the right to enjoy and use depends on the right and its revocability

otherwise it is not deprivable. On the contrary, some realize the privation of the civil rights as being more caused by obligations hence non-deprivable; "the right to enjoy and perform civil rights generally include the capacity for the enjoyment and use that is granted in the form of an obligation, the privation of which from oneself is impossible" (Mohaqqeq Damad, 1997). Moreover, the late Dr. Mahdi Shahidi is of the belief that "… some of the rights, as well, are obligations hence non-deprivable" (Shahidi, 2000); he has stated elsewhere that "purchasing a certain property or the right to participate in a given tender or marriage with certain individuals are substantively obligation, hence non-deprivable and non-revocable, but an individual can become committed to the non-purchase of a certain property or not to get married to a certain person" (Shahidi,1998). Therefore, the late Dr. Shahidi believed that the privation of the right whether in partial or general form is impossible for it is an obligation, although becoming committed to the desertion of an action is influential and authentic.

Having presented the ideas and notions of the jurists and in a general conclusion in response to the question as to whether the privation of a right in partial form is possible or not, it can be stated that the opposite can be inferred from the article 959 of the civil law considering the setting of "generally" as a constraint; so, an individual can partially deprive oneself of the civil right and/or the right to perform his or her civil rights and an individual can deprive oneself of each of his partial civil rights. It seems that the constraint "generally" is of a great importance in article 959 of the civil law and the article's appearance allows such an issue assuming the opposite assumption.

But, before entering a detailed and deductive discussion, it has to be noted that the privation of right even in case that it is related to a general and civil right is per se general because it holds true for a large number of individuals. But, concerning the privation of the right to take actions in case of a given and specific agency, it becomes an example of partial privation not general privation because, first of all, it is about a civil right and, secondly, it is unique to a certain and case-specific example and this is logically holding true for a given person (privation of the right to take action in a special case) and not holding true for a large number of individuals. Thirdly, if this case is left to the judgment by the customary regulations, it will be considered as a partial not general right. Putting this discussion aside, in order to reach a correct conclusion in this case, it has to be seen in the first stage that is there an opposite concept for it or not? As opined by the majority of the fundamentalists, the constraint is not sensible unless there is evidence indicating its meaningfulness (Na'eini, p.501; Mozaffar, p.114 and Ansari, 1995). According to this constraint, it seems that the legislator has accepted the privation of the right to enjoy and enforce partial cases and the notions by the law experts and an array of the statutory articles, including articles 448, 679 and 822, as well, confirm this same issue. It is also believed that the "power to partially deprive oneself of certain rights is the prerequisite to an individual's legal freedom because the right to deprive oneself of a certain issue in the real world is per se enumerated amongst the civil rights granted to the human beings" (Emami, 4, p.108). All of these considerations prove the sensibility of the foresaid constraint. On the other hand, the constraints are set in the law according to the facts that, firstly, "the principle in law-

writing is that the legal terms should be firm, explicit and expressive, brief and without redundancy and, secondly, it is assumed that the legislator is in the position of stating the inclusive and generalizable regulations; thirdly, it can be concluded based on the legal texts that the legislator's objective of mentioning the descriptions and constraints is the delimitation of a stipulated verdict" (kolaini, Ghafi, p.162, 1987). It was stated in the previous section that the expediency of the principle of the wills' governance is the effectuality of the conditions and contracts provided that they are not contradictory to the law. Of course, on the contrary, there is this theory that the constraint "generally" in the article 959 of the civil law should not be given a solid meaning and, based thereon, the privation of a right in a partial manner has to be always considered permissible (Shahidi, 2000).

CONCLUSION:

The condition "privation of the right to take action" is amongst the conditions considered supplementary in the non-revocable agency contracts because, without such a condition, the principal can even without deposing the lawyer take an action in regard of the agency subject that renders the agency contract revoked. Therefore, in order for the lawyer's right not to be abused and trampled, the condition "action right" seems to be necessary. In the present study, the aforesaid condition was exemplarily investigated in terms of its being a right or an obligation and it was stated that the foresaid condition includes rights and since the principle in the conditions is permissibility, setting of such a condition would be devoid of any flaw hence permissible. The thing prohibited in article 959 of the civil law is the privation of the civil rights in general and absolute forms; however, the divestment of these rights in partial form is not faulty. And, because it was stated considering such generalities as the "*Al-Nās Enda Shonūtehem*" and relying on the freedom of the parties that the principle is on the non-limitation and prohibition of the transacting parties and that such a right is more consistent with its being of a prerogative nature than an obligational nature. Thus, it can be asserted that the principle is the prerogative nature of such cases unless their obligational nature is proved. This novel perception of the narrations and generalities can be applied to the other cases and the law scientists should explore the other cases and determine the prerogative or obligational nature of the dubious cases.

The present study could play a considerable role in the legal discussions and semantics.

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