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Analytical study on abstract description of transaction documents in Iran law

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ABSTRACT: The ongoing development of transaction and international transaction and the need for speed and ease within the concept of transaction and the role of circulated capital and trade figure in the country's political and economic prospect has obliged the government to provide businessman and merchant's sense of security in business relations via certain set rules and regulations. Documents, such as promissory notes and checks and bill of exchange s, with specific features and functions, in addition to the inevitable impact on the economy of any country are one of the most important tools of today's transaction. No businessman can be found who doesn't deal with these documents daily. On the other hand, the merchant needs security and legal protection along with two principles of speed and ease through circulating its capital; this objective cannot be served by conventional methods in the civil law system thus in the international and domestic legal system there are certain principles dominating business concerning bill of exchange s, principles of which don't exist in civil documentations, therefore considerable part of the discussion regarding transaction documents deals with their set principles. With respect to the high amount of disputes regarding business documents, these principles and specifically the principle of abstraction of transaction documents are important and inevitable issues.

***Keywords*:** Transaction documents, transaction documents descriptions, origin commitments, bill of exchange's commitments, abstraction of transaction documents.

INTRODUCTION

The first subject
Defining and analyzing the principle of the abstraction of bill of exchange's procedure

Bill of Exchange's procedure usually is followed by a legal relationship and through meeting the resulting commitments, legal relation is done. For instance, after buying a car instead of paying the purchase transaction , in cash, bill of exchange document is signed and delivered to the seller or tenant submits his monthly rent in bill of exchange document or the debts of what he owed to someone else is paid by a pledge bill of exchange documents this example observes the former legal relation between drawer of the bill of exchange and drawee, but regarding the former relation between drawer of the bill of exchange and drawee it can be assumed that the person who has accepted the bill of exchange is usually in his debt as a result of the former legal relation with the drawer of the bill of exchange and on the account of meeting this commitment, he has undertaken a bill of exchange proceeding (drawee). Based on France's law the former debt or in general a commitment that is currently due to be met or will be met by the drawee in favor of the drawer is called bill of exchange's place hence the concept of place is of such a concept made up of the French lawyers and from the contemporary authors point of view it is what was owed from the drawee to the issuer as the time draft. With respect to this theory, there is a difference between the bill of exchange's place and the source. The issuer might send a good for drawee and the drawee is obliged to make a payment as time draft or probably a bank is the bill of exchange's place where the issuer has a current account or so (Eskini, 2008) These former legal relation, source of the bill of exchange and the resulted debt is known as bill of exchange's place with regard to this theory, there is a possibility that a bill of

exchange lacks a place and even the issuer does not intend to provide place on the due date of drawee (Jafari langroodi, 1996) (compromising bill of exchange). In other words a bill of exchange might be issued with the drawee's liability, without being informed of the relation between the drawer and the drawee or even the issuer does not intend to make the payment in France's law various arguments over theory of the place has been presented such as the following questions: Does the existence of the place or its provision in the future prove liability? Does the issue of bill of exchange transfer the place to the drawee? Whether compromising bill of exchange is liable or not? Without considering the details of the theory of the place it will suffice it to mention the fact that (Eskini, 2008) the development of this theory basically stems from not considering the abstraction of bill of exchange. This theory was presented presuming the relation between basic commitment and bill of exchange commitment and has tried to explicate this relation. Since, firstly, this theory couldn't justify the rules of the bill of exchange. Secondly, it does not have practical benefits especially recently it has been abandoned and principle of the abstraction of bill of exchange's procedure. According to this principle, bill of exchange commitment becomes independent of the original or basic commitment of the committed person (Eskini, 2008). In other words, the commitments in terms of successive drawees, is essentially separated from transactional relations which composes the cause and reason (Saghri, 1999) hence the drawee due to the mere bill of exchange and the subsequent commitment is entitled to demand the payment of bill of exchange from any of the committed people (Bahrami, 2008) it assumed that abstraction of bill of exchange procedure is the most crucial principle, to the extent that other principles and descriptions of bill of exchange arise from this principle moreover it seems that this principle is acceptable in international conventions and Iran's law. The documents of this principle are:

A) Articles 30 and 33 of UNCITRAL Convention, respectively in the matter of non-liability of basic defenses and guaranteed liability;

B) Articles 47 and 17 of Geneva Convention 1930, respectively in the matter of the guaranteed liability of the endorser and non-liability of basic defenses;

C) Articles 231, 230, 249 of Iran Commercial code in the matter of guaranteed liability of the endorser and the acceptor and drawee's liability.

Abstract description of the transaction documents results as follows in details:

The second subject: results of the abstract transaction documents.

Chapter One: principle of implausible defenses against the holder in good faith.

Definition and Analysis

One of the descriptions of transaction document is an abstract description. Whereby, however, the signed transaction document contributes to an independent commitment from the source of its issue. In other words, transaction document independently and self-reliantly guarantees the rights and commitments or the parties. Other attributes of the transaction document is the capability of being transferred. That is the transaction document merely by an endorsement is transferred to the other. Transfer of the transaction document recipient has no obligation to consider previous agent's personal relations, or source of issue or endorsement of transaction document and there is no concern about probable defenses of the document's issuer and previous agents. For these reasons it is said that the defenses to the issuance of origin or endorser are not accepted. Signatories of the document (including issuer and guarantor and endorser) in case of holder of the document's defenses cannot undertake actions such as termination or invalidity of the transaction, swap, infringement on the condition and description, fraud, illegitimacy and such like. This basically means that these defenses are not considered and the court does not interfere in such matters, although the proof to the defenses is strong and undeniable. The principle of implausible defenses is under the scope of abstract description and transferrable description.

Article 17 of the Geneva Convention 1930 (regarding bill of exchange) the principle of implausible defenses has been emphasized as follows: " Persons sued on a bill of exchange cannot set up against the holder defenses founded on their personal relations with the drawer or with previous holders." Article 22 of the Convention on March 19, 1931 in Geneva on providing a uniform for cheques has noted: "The endorser of a cheque cannot set up against the holder defenses founded on their personal relations with the drawer or with previous holders, unless the holder in acquiring the cheque has knowingly acted to the detriment of the debtor."

In Iran's Commercial code an explicit article concerning implausible defenses hasn't been set. However, legal verdicts and court procedure somewhat compensate this deficiency. In addition, in the draft amendment of the commercial code, this issue has been partially taken into consideration: this subject has been presented in the draft of articles 140, 186, 199, 212, 265, 276, 286, 343, 352 and 386.

For instance, the draft amendment to Article 186 on Commercial code designates; common transfer (simple) is a transition whereby the transmitter transfers his rights to the holder; however the person who has prohibited the

transfer could set up against the holder defenses founded on their personal relations with the person to whom the document has been passed on.

Branch 25 of the Supreme Court of the country File No. 9/ 7530 in accordance with the vote number 25/ 788 dated 1.31.1993 issued the verdict in the initial trial court during the petition it referred to this issue explicitly (Bazgir, 1998)

Exceptions of implausible defenses:

The principle of implausible defense is not a permission to be used without reason and cause. In none of the legal systems designation of the payment to the false is not considered valid. Transferring money from one person to the other person is only possible through transaction based on both parties consent. Therefore, exceptions are made to the principle of implausible defenses. These exceptions only confine the limits of the principle, without damaging the abstraction description of the transaction documents. The main exceptions are as follow:

A – defenses between immediate agents: If there is an argument in the relation between the issuer or endorser of the transaction document and his immediate person, although the principle is based on the endorser's debt of the transaction document, therefore the defenses claimed by the defendant have to be looked into lawyers have written in this regard:" the mentioned principle (implausible defenses) loses it attribution in the case of personal relations between the immediate. Hence whether the committed person objects that the commitment or previous legal relation due to any legal reason annulled or dissolved either voided or even after its issue, the document has been destroyed because the fulfillment of the promise, annulment, discharging from a debt, novation, swap, passing the ownership, revocation, termination , terminated , and ... or otherwise, this document because of another writing has been entrusted to him, and such defenses, in this situation despite the principle of implausible defenses, they are taken into consideration (Bahram, 1999) As it was observed in vote Number 388 and 389 dated 01.11.1999 court branch 28 of Tehran's law court, in the verdict, while not accepting the defenses between the issuer of the cheque and the endorser against the holder of the cheque, this point is stipulated that the defenses between immediate parties can be investigated.

B – Defenses against the holder in bad faiths: Perhaps the immediate owner of the transaction document colludes or pretends to delegate the document to the other in order to deprive the issuer of presenting the defenses. The principle of implausible defenses is just to protect the holder in good faith. While supporting the holder in bad faiths is contrary to justice, judicial and legal standards.

The holder of a transaction document is considered with bad faith:

1. when he is aware of the transaction document's defenses. In other words, being acknowledged of the lack of plaintiff's debt claims the document. According to the verdict of the fourth branch of the Supreme Court of the country dated 09.4.1949 Court's judgment on the absence of right of the promissory note's holder concerning that aforementioned promissory note entailed endorser's obligation to transfer his house to the issuer and which commitment was not fulfilled, against the holder of the promissory note whose awareness of the matter was not proved, is not correct " it indicated that if the holder was aware of the record and the lack of commitment, plaintiff's defense was capable of being investigated.

2. Document is obtained with collusion or bad faiths. This means it is proved that the document is claimed by fraud and manipulation and other illegal manners.

3. The document is obtained without a specific substitution. The lack of liable evidence, evidence on bad faiths and it is one of the methods for obtaining payment.

However, it has to be suggested that the holder of the document has no obligation to prove his absence of bad faiths. Rather it is the duty of the plaintiff to prove to the court the bad faiths of the holder of the document or his acknowledgment of the lack of debt or free of charge document claim.

C – The form defenses of the document: abstract description is the specific attribute of transaction documents. Transaction document refers only to the documents that have a particular form to be known as such documents. The absence of form conditions in some cases results in the document to violate specific regulations of transaction document. Therefore defense against the document is not only plausible, but also if the defense is proved, it will result in the deletion of the document from the category of transaction documents.

D – Defenses relating to the signature: apparently the fundamental element of the people's commitment is their will and satisfaction to make a commitment which is ensured by the signature. If one objects of his signature, the court is obliged to consider the case. Defense of signature is probably due to the forgery or under coercion and duress in whatever way it is plausible and considered against any of the holders. Because not only the forged signature doesn't hold any obligation for the person, but also these discrepancies are related to public regulations and the need to its consideration is required by the imperative rules. The point that seems necessary to mention is

that based on the principle of independence of signatures, which will be discussed in this study , proving one of the liable people's signatures to be forged document does not affect the commitments of the other signatories. Articles 34 and 25 of UNCITRAL Convention has mentioned this issue:

"A forged signature on an instrument does not impose any liability on the person whose signature was forged. However, if he consents to be bound by the forged signature or represents that it is his own; he is liable as if he had signed the instrument himself. "

E - The defence of incapacity: If the objector is the issuer of the cheque, the defense to incapacity cannot be considered. Since banks do not provide chequebook for the people with incapacity. But with regard to the endorser, guarantor, or promissory note drawer or bill of exchange's drawee there is a probability that at the time of the signing the document they do not have legal capacity. Apparently, the defense of incapacity of any holder of the document is plausible. A committed person, who has incapacity for the bill of exchange's transaction, is not basically liable. Thus, the defendant can set up against the holder of the document defense of his incapacity.

ecause supporting the rights of incapable people which is based on public regulations, demands such an approach.

Clause (c) of paragraph 1 of Article 30 of UNCITRAL Convention indicates a verdict that:

1 - A party may not set up against a protected holder any defence except:

(a)……..

(b).....

(c) Defenses based on his incapacity to incur liability on the instrument or on the fact that he signed without knowledge that his signature made him a party to the instrument, provided that his lack of knowledge was not due to his negligence and provided that he was fraudulently induced so to sign.

Article 7 of Geneva Convention 1930, also cited the feature of setting up against the holder such a defense: "If a bill of exchange bears signatures of persons incapable of binding themselves by a bill of exchange, or forged signatures, or signatures of fictitious persons, or signatures which for any other reason cannot bind the persons who signed the bill of exchange or on whose behalf it was signed, the obligations of the other persons who signed it are none the less valid." (Kaviani, 2012)

F- Defense of culpable claim of the document: commitment of the criminal acts such as theft, fraud and betrayal of trust and such like, and methods of document claim through mentioned ways is never accounted as valid and liable legal source, albeit Geneva and UNCITRAL Conventions haven't regarded theft and lack of documentation as the exceptions Therefore, even if the document was stolen and eventually the person is unaware of the incident becomes the owner of it the original holder of the document (before the robbery) cannot ask for the return against the unaware holder (in good faith) and can only ask for damages causes by the thief(Kaviani, 2012; Sotude Tehrani, 1996)

. Paragraph 2 of Article 36 of UNCITRAL Convention and Article 8 of Geneva Convention1930 have mentioned simple rules on this matters(Kaviani, 2012)

Chapter Two: Debt obligation

Giving the property is not a cause of owing to someone in civil code. Because it may be paid under titles such as loans, debt, deposit, etc... Article 265 of the Civil Code states: "If anyone gives property to another, it is deemed that he has not done so without consideration; therefore if a person gives property to another, while he is under no obligation to do so, he can ask for the return of such property". According to this article the payment does not count for the debt. Therefore if someone proves lending money to someone, has the right to ask for its return. Article 302 of the Civil Code provided the fact that" If anyone owing to a mistaken belief that he is in debt pays that debt, has the right to reclaim the amount in question from the person who took it without right.." If the receiver claims that the payment was due to the debt from the payer, he has to prove his claim. The payer has no obligation to prove that he is not in debt under this condition; since following to article 265 of the Civil Code , giving the property does not bring debt, however there contrastive views towards this issue(Bahrami , 2008).

But in the transaction the priciple is based on the debt of the signatory of the document. Therefore, if anyone gives to another a transaction document , the principle is that the person is in debt (Bahrami, 2004) The practical result of this principle is that , firstly , if the holder of the document ,demands the payment , the issuer cannot refuse to pay merely because he was not in debt. Secondly, if someone pays someone by cheque, as long as the title of loan or any other title that may be useful to return his right is not proven, he cannot ask for the return with reference to articles 265 and 302 of the civil law.

Another important point to mention is that if the issuer of the document (cheque for example) by representing a reason extracted from the notes entailed in the cheque or any other writing proves that the issue of the document was not due to the debt whereas it was for the right of its return, in this case the right to ask for the return is

claimed from the person to whom the document was submitted. In other words, the right to claim the return against the transfer of the subsequent receivers of the document is not plausible.

CONCULSION

1- Upon the theory of the place of bill of exchange the abstraction of the transaction document has been set.
2- Following commercial code decreed on 03.05.1932, the principle of the abstraction of the transaction document is not explicitly approved.
3- The abstraction of the transaction document has a substantial role with regard to the principle of velocity in commercial relations; however other criteria such as specialized commercial courts and commercial procedure cannot be ignored in accelerating the commercial relations. Merchant's court or the special commercial court used to exist during years 1925 to 1939 for 14 years and dealt with trade disputes exclusively but after 1939 due to unknown reasons was dissolved and currently the specialized commercial court doesn't exist of course in the commercial bill draft dated 2006 of the cabinet council in article 1027 of the bill, its court has been predicted although this bill hasn't been passed yet.

There are no rules concerning specialized commercial procedure and in public session No. 402 dated 06. 03. 2011 on Monday the bill was acknowledged and was referred to the related commissions for a review. The bill is composed of 9 chapters and 133 articles in addition the approval of commercial procedure's bill was mentioned in the commercial draft of the same 1027 bill and hence with regard to the absence of these two the substantial role in accelerating transaction deals is concealed in the abstraction principle.
4- International Geneva Convention 1930 and UNCITRAL Convention which was initiated by United Nations Conference on Trade and Development (UNCTAD) and was approved by the United Nations general assembly explicitly accepted and predicted the principle of the abstraction of bill of exchange's obligations.
5- transaction document has been presupposed by financial credit in a certain amount due to a certain date or financial credit guarantee, based on this part of the bill of exchange, bill of exchange obligation is an abstract obligation on the subject of financial credit or financial credit guarantee and the obliged person of the credit is considered legal.
6- The principle of implausible defences against the holder in good faith, are considered as an abstract description of transaction documents and the abstraction of the transaction documents is an original principle.

Suggestions

There are two extremely important conventions worldwide under the subject of commercial relations that have contained crucial rules and regulations these conventions are as follow:
A: The Geneva Conventions :

Geneva Convention concerns bill of exchange and promissory note and the Geneva Convention on cheque in 1930 and 1931 was initiated by the United Nations and many countries joined it, including 30 countries that have participated in these conventions or applied these documents in the approval of their internal trade law(Kaviani , 2012) and interestingly enough the majority of the countries that joined the convention, are the members of the World Trade Organization (WTO) and moreover most of the commercial relations goes to those countries that are members of the organization (Mousazadeh, 2010).

Unfortunately Iran's government has not joined this convention, although it can conditionally join this convention. This study recommends Iran's government (granted) after examination of this convention join as soon as possible in order to take an important action on the acceleration of transaction deals and undoubtedly these conventions have proposed appropriate solutions in terms of commercial relations and contracts and there are no other ways to accept these conventions for dynamic internal trade laws, otherwise in accordance with these conventions through codification of internal laws an incomplete step is taken to promote commercial rights.
B: UNCITRAL Convention on bills of exchange and promissory notes:

This convention was also initiated by United Nations Conference on Trade and Development (UNCTAD) and in 1988 was approved by the United Nations general assembly this convention has the following differences comparing to the Geneva Convention:

Firstly: it only supervises bill of exchange and promissory note and doesn't include cheque.
Secondly: the regulations of this convention enforce international relations and other words it will not affect the internal laws of the countries.

Thirdly: this Convention is significantly affected by the on the Anglo-Saxon legal system and its comparison with the Uniform Act of America indicates many similarities in terms of content and codification.

Fourthly: The efforts of the legislators of this convention to enter into details are obvious in contrast to the Geneva Conventions. (Kaviani, 2012; Eskini, 2008; Saghri, 1990; Erfani, 2006; Katebi, 2006; Bahrami, 2008).

UNCITRAL Convention is not enforced yet which is because its enforcement under Article 89 of the convention entry is subject to the membership of at least ten countries, while currently eight countries have joined it. By the end of 2009, these countries include: Canada, Russia, America, Guinea, Honduras, Mexico, Gabon and Liberia. (Kaviani, 2012).

However, for the development of commercial relations and the related complex issues Iran's government must surely join these conventions so that it can keeps up with the path of growth and development of the other countries in terms of their commercial relations.

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