

Survey of Effects and sentences Time Sharing from the perspective of Imamiyeh and Iranian Law

Ahmad Mahmoudzahi^{1*} and Amirhamzeh Salarzaee²

- 1- Department of Jurisprudence and Principles of Islamic Law , Faculty of Theology and Philosophy, Islamic Azad University, Zahedan Branch, Zahedan, Iran
- 2- Department of Jurisprudence and Principles of Islamic Law, Faculty of Theology and Philosophy, University of Sistan and Bluchestan, Zahedan, Iran

Corresponding author: Ahmad Mahmoudzahi

ABSTRACT: Time sharing” or “periodical ownership” related contracts are new types of immobile contracts of temporal sale which are created in response to modern life necessities. The main feature of this type of contract is that the ownership of property is transferred to the buyer for a limited period of the year. Therefore, unlike traditional sale contracts in which the buyer acquires the complete and continuous ownership of the property purchased, in time sharing contracts the buyer owns the property only for a limited period of each year, in January for example. Thus, the property in question may be owned for a limited period during a year by a number of owners. As a result, the whole property price is divided between the owners according to different times in a year. This article discusses the status and content of time sharing contracts from Imamiye and Iran laws’ perspectives. The study consists of 5 chapters. It begins with a section entitled as Introduction that includes definition of topic, significance of topic, aims and objectives, literature review, main and secondary questions, methodology, structure of the study and the key words (Temporal Sale, Jurisprudence, Law, Imamiyeh). According to some of jurists, the term sale (baiy’) traditionally refers only to absolute (permanent) sale. On the other hand temporary sale primarily is not typical of common sale and it is out of customary or traditional sale. In this regard, the late Sayyed Muhammad Kazim Yazdi pointed out, “The reason for invalidity of time sharing is that traditionally the term sale (baiy’) does not refer to time sharing and if we are doubtful about the validity of such a reference it is not typical of sale. Hence, despite of having doubt in salability of such a contract, one cannot resort to the common in order to prove its validity”. However, it seems that the traditional definition on the concept of sale (baiy’) is that the seller sells the ownership of the property to the buyer unlimited and without the restriction of time and as a result the time sharing is opposed to traditional meaning of sale. Whereas the traditional authentication of sale is the primary requirement for the validity of sale, temporal sale cannot be regarded as sale or valid. Thus even if there is doubt, temporal sale is not typical of sale. Therefore, the analysis of Time Share which is entitled as contract of sale is false and unacceptable. Accordingly time share contract is not mainly a kind of common sale but a specific contract or agreement which of its tenor is scheduled ownership transfer and accordingly most of the jurists and researchers who have been asked about time share, have not regarded it as common sale.

Keywords: Temporal sale, temporal sale requirements, Periodical ownership, Periodical sharing ownership.

INTRODUCTION

If the process of interaction between legal performs in correct, in principle and measured mode it can grow country law in the present age that is communication age, the cause and effect of legal systems are unavoidable, because the progression of industry, technology, science and human knowledge create new phenomena in the

various areas such as in legal laws and phenomena and the abundant communication of governments and nations with each other's lead to transfer of the new experiences from one place to another place.

Law knowledge that under takes the mission of legality of personal and group activities in society mustn't have passive state and one- side effectiveness against new phenomena. Therefore it is inappropriate expectation that country law always changes according to new issues but: each new and unprecedented problem is measured with accepted principles and basics and if it contrary recognizes, must prevent its implementation in the country and must attempt in law ful direction of course, this sentence doesn't mean prejudice on old legal phenomena and installations and absolute lack of acceptance of new facilities and institutions, but we say that certain juridical basics and accepted legal principles mustn't be sacrificed in justification or correction of the new phenomenon (Ansari, 1995).

Problem statement

is repeated by passing time, periodically in limited time like x2 person owns a villa in spring season or forwarding month or first weak of year and in other occasions , this villa has other owners. This contract cab be one year, few years or permanent.

This ownership has obvious difference with joint ownership because in joint ownership, all owners in all times are similar to own red and what is caused that ownership of each one is recognized is share or quotas of each one relative to own red.

But in new hypothesis, the ownership of various people on the same thing is divided by time end share of each one is absolute and without conflict possession in the special part of time that by passing that time, his/her ownership be no longer contemplate fully that again during passing time, that part of time is repeated and his/her ownership bears again.

The main goal :

To study of works and orders of time sale from Imamate view and Iran law

The minor goals

To identify and study time sale concept from Imamate view

To identify and study time sale concept from Iran law

View comparative study of time sale from lamate view and Iran law

Research hypotheses

This contract is non- native and imported and including west law.

According to various juridical ideas, we can justify this by view of some jurists.

It seems one can justify this applied contract by precent legal overcomes.

sale

sale contract is the most important and prevalent transfer of ownership contract and because of this importance, it allocated the main part of legal and juridical subject. One can claim that sale concept is the most obvious concept and all people easily understand the difference of this contract with other contract and there isn't doubt about it. But the difference of jurists about the definition of sale contract and its feature and conditions creates doubts about some examples of sale. On the other hand jurists don't have main difference about sale nature but they have difference of opinion some contracts. As an example we can infer to transfer of rights and benefit that according to some jurists it is sale and according to some other it is outside of sale.

MATERIALS AND METHODS

In this resaerch after conceptualization of time sale and similar words its status and back ground in Imamate view and Iran law have been studied and then the contexts and documents are analyzed.

Juridical views about time sale

- In contracts section, what is the order of sale of one property chronologically (for example, one property has been sold to four persons, this it or rent or so on)
- According to Ayatollah Mohammad taghi Bhjat, buying and selling for some person chronologically that in each time, one person is owned, isn't correct.
- Ayatollah Sayyed Ali sistani states that sale isn't limited to time but one can rent it on each season rent is the ownership of all benefits.
- Ayatollah Lotfallah Safi Golpayegani states that selling property like the mentioned from isn't legal, but rent isn't forbidden God knows.

- Ayatollah Yosef sanei states that if the property is sold to four persons and they divide it is allowed but if seller sold it seasonably, one can't decree to correct it
- Ayatollah Sayyed Abdolkarim Mosavi Aardbili states that if four persons want to buy a house and each season one of them uses it, it is allowed and house is for four persons and in each season, each of them rents it and this transaction Temporal sold.
- Ayatollah Naser Makarem shirazi believes that it isn't allowable but if it is by rent, it's correction isn't improvable.
- The status of time sale in the determined contracts Determined contracts are contracts that in, juries prudence and law been expressed like rent sold, borrow and so on, this kind of contracts that has been paid attention from long time and all affairs have been assigned to the will governance on the contrary for in determined contracts is law, there isn't special title their number is unlimited and the conditions and effects of each contract are determined according to public rules of contracts and will governance like contract related to dissemination of book and opening current account (Rsearch Damad, 2008).
- Lawyers, according to the result and effect of contract divide contracts into two possessory and contractual groups. In the possessory contracts, the direct effect of contract is transfer of ownership or other determined right like sold, rent life state right far a prescribed period and so on but in contractual contracts the result of contract includes establishing, transfer or fall of commitments like bank draft guarantee, guardianship so on.

The main characteristics of sale contract are as follow:

1. Sale contract is possessory this means that seller transfer ownership of object of sale by price client. Regarding this feature sale contract discriminates from contractual like bank draft and allowance contracts like borrowing and deposit and contracts based on transfer of free possession like gift.
2. In sale contract property dealsec namely this sale is a transfer of the original property in like of substitute. This feature separate sale contract from rent and other contract that is about unsimilar transfer of possession.
3. Necessary : other characteristic of sale contract is it's necessary that separate it from allowable contracts. Sale permanence: one of the other sale characteristic is sale permanence, this feature must be examined why most jurists have not expressed it. Therefore we must pay this question are permanence and durability of essential condition of sale or not 2 in the other words whether temporal sale is an example of in common use in jurisprudence or not and if sale title is true, whether this sale is correct or not.

peace (the act of transfer of one's property to else)

- A) Peace contract definition, it's orders and characteristics peace contract is one of determined contract that has been discussed in jurisprudence. Peace contract means solving conflict, the legitimacy of peace contract does not confine to cases that conflict accurse or difference exists. But peace contract as independent contract has credit and legitimacy along with other contracts peace

Peace contract definition, its order and features one of determined contracts that has been discussed in jurisprudence is peace contract.

According to this view it is seen that jurists believe when we face this unknown contracts that isn't adjusted with no known and determined contracts, the conclusion of this contracts iss allowable through peace contract.

1. Some jurists believe that in sale contract, price can't be included rights. But they validate this exchange through generalities of its contract correction, but they legitimate its conclusion through peace contract
2. In insurance contract that is new contract, although the contemporary jurists validate its contract through correct contracts. But they consider correct its conclusion through peace contract
3. In some explicit text about peace we face to contracts that aren't adjusted to the determined contracts. But peace contract is allowable

RESULTS AND DISCUSSION

Discussions and conclusions

Given that this introduction of time sale that has been presented in question hypothesis, it is one correct transaction that buyer is owner in that season and can transfer property like personal use or selling or rent to other and so on or exchange of property to he/she is owner at that certain time and leaving property or lack of entrance in landed property in the next part of time isn't avoidance of his/her ownership during years at the same part of time. Suppose this sale avoids the common truth of ordinary possession in sale it doesn't avoid the truth of new and legal contract that legislator not rejects it and the wise accept it correct and whole verse will include it.

According to legal nature of sale contract according to possessory and changeable mode and regarding domestic and international market common law it appears that changeable guarantee rule of seller resulting from solid waste before receipt and giving good to buyer was according to legal rules and principles and logical basics and isn't considered.

Exclusive and against rule and resulting from devotedness and pure submission and we can see the generality indications of this rule in civil law such as ret, borrow and commitments.

There fore the parties agreements against the order of article 387 of the civil code in domestic sale and also the agreements of traders against supplementary rules of international sale convention penetrated by lack of conflict with public order.

Suggestions

- To prevent confinement and slump of capital because basically people who not consider permissible to spend much capital and confine it far entertainment of one week or few days in years, always prefer to sluggish little capital and obtained the desired result, thus attempt to invest through time ownership to create suitable place far themselves and not spend much capital

To provid investment possibility for little investments for buying land is almost impossible because of increasing high cost for people who have little capitals and thus it is possible by contract of time sale to use their little capitals in buying.

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