



Voluntary transfer conditions of contract in the rights of Iran, Britain and International documents

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Abstract

Transfer contract and assignment contractual position from the transferor to the transferee would cause the base contract party come out from the basic legal relationship and another person as deputy be placed in the contractual position of assignor. In the voluntary transfer unlike involuntary transfer, the contract party directly with the consent of the other party assign to the third party all rights and obligations arising from the original contract. So, transferor coming out from the base contract and transferee is placed in his position and in addition to take benefits from all rights and privileges created for the transferor, as he is obliged to perform all the duties and obligations under the contract (with the exception of personal commitments) for the base contract non-variable party. In this kind of transfer, transfer of contract is possible when conditions are provided and in the absence of any conditions, the voluntary transfer faced with a serious problem and it is not possible.

Keywords: voluntary transfer of contract, transfer of rights and obligations arising under the contract, transferor, transferee

Introduction

Voluntary transfer of contract is provided through an agreement whereby the base contract party assign his position to a third party. Transferable and non-transferable contracts are depending on the type of contract and transmission. Almost, except in the case of contracts which, by their nature cannot be transferred (Katoozian, 1997: 3/291 onwards) there is no doubt about the ability of transferring voluntary contracts.

Prove the validity of this argument are 672, 554, 545, 541 Articles from the Civil Code and Article 19 of the Landlord and Tenant Law Act 1356 and Article 16 Procedure letter from the Landlord and Tenant Act 1376 and Article 24 Treaty General Conditions and Article 17 Insurance law Act 1316 and Article 12 Labor Law and Article 54 establishment law of Iran Central Insurance and Insurance and Article 6 compulsory insurance Law for damages to third parties as a result of accidents caused by vehicles approved on 2016 and Articles 17 and 18 Presell Contract Law Act 1389 and Clause 1 of legal bill for merging National Iranian Steel Company and Iran Zob Ahan Company and holding the National Iranian Steel Company Act 1359 which recognized this important and accepted it.

In English laws, a kind of transferring contracts is voluntary transfer; however from a legal perspective and at first glance, the assignment of contract means transferring contractual rights and without commitment the obligation on the transferee, only rights arising the contract will be transferred to the Assignee. Despite this, the above assumption faces with two references. First, the transferee accepted obligations and has taken it and second, the type of legal relationships is in a way that demanding rights arising from contracts related to the implementation of commitments and the two cannot be separated from each other. In other words, there is such a linkage between the rights and obligations arising from

contracts which transfer rights without obligations transfer would be unthinkable. (Treitel, 2003: 618-19) ^[29]

Of evidential examples in this discussion is the sale contract in English law whereby the rights and obligations both transferred to the Assignee. It can be further assumed that due to sell contract, the buyer has the owner and thus the transfer of contract will not be the case; however on the other hand at all kinds of sales upon conclusion of the contract, contract does not creates a right of ownership for the customer and on the other hand on its rights, the transfer of ownership from the seller to the buyer, also depends on the agreement of the parties. (Mrsh & Soulsby, 1989:18 -Beaton, 1988:151) ^[25, 18] Thus, we can say that in the contract of sale, the buyer can give his position in contract to a third party and makes him his deputy. Hence, in this case the seller has responsibility toward the transferee and obliged to his duties.

On the principles of international commercial contracts in the third part of the ninth chapter, under Article 1-3-9, the voluntary contract is accepted and expressly stated that the assignment of a contract means agreed transfer of rights and obligations of one person to another. In principles of contract law in Europe, this important has been studied and the second speech of the twelfth chapter of principles dedicated to the discussion of voluntary contracts. According to the first paragraph of Article 201-12 "the party to contract can agreed with the third party to be replaced with himself. In such cases, succession is only effective as a result of the consent of the other side and the first side is absolved. "

In the common frame of reference, the voluntary transfer of contract is also recognized and thus Article 5: 301 in clarifying the scope of its authority related to the discussed issue explicitly stating that: "The provisions of this section apply only to the transfer with compromise." It is obvious that the concept implies recognition of contract voluntary transfer in a

way that in following outlines the regulations, transfer of contractual position is described as the contract side with the consent of the other party agrees with the third party that as the contract side replaced him (Article 5: 302 common frame design of reference)

After this introduction, it should be acknowledged that there are four conditions necessary for the realization of contract voluntary transfer which the absence of any of them will make it impossible. These include:

a. Impersonal Contracts

Contracts in terms of the character, attributes, skills and responsibility and the ability of the contract party divide into two types: personal and impersonal. In personal or vested with the individual contracts, the contract party trust to the skills, financial and administrative abilities and knowledge of the other side and with rely on the same foundation called for the direct implementation of the contract and obligations arising from it.

In Iranian law, the separation and division of contracts into personal and impersonal is not considered separately; however, this differentiation in discussions of error effect in the person and character of the transaction (Katoozian, 2012: 1/466 and 465) and contagion effects and results contract to the deputy (Shahidi, 1998: 175)^[6] were analyzed.

However, since the transfer and assignment of contract obligations imposed on deputy, therefore, one of the necessary conditions for the transfer of each contract, is not vested with the individual and the impersonal obligations arising from it, as if a contract vested on a certain person and according to the individual character and his qualities and abilities he has been concluded, its implementation by another person except him is not possible and not accepted by the other person and thus transfer contract will be impossible. It should be considered that the impersonality of the contract, often refers to the obligations arising from it; however the rights of contracts may also imaginable and sometimes an obligation exclusively in the interest of the party to the transaction has been created and if obligee dies before gaining it, his heirs cannot benefit from this commitment (Shahidi, 2001: 165). However, according to the interpretation of Article 201 of the Civil Code, all contracts that are based on the character of contract party are considered from this type. It is noteworthy that some lawyers believe that the personal contract is different from contract depends on the person (Jafari Langroodi, 1999: 2581); because to his view, personal contract is the contract that the obligations arising from it is vested on the person (such as marriage), but contract vested with the individual is a kind of personal contract. Evidence that has been presented in this regard is Article 201 of the Civil Code which the character is the main reason for contract, the contract is deemed to be vested with the individual but it is not personal.

However, we can say that the impersonal contract is a contract in which the qualities, skills and the overall character of the transaction party have not been considered and it is not important for the obligee who execute contractual obligations and this is not vested with the individual contract. It is clear that such a contract can be transferred to the deputy (including general or special deputy). That is, if the contract party dies, his heirs as deputy can run the contract and even the contract party at the time of his life could transfer the rights and obligations

arising under the contract to another and his special Deputy is committed to obligations.

It is also important to note that although the personal contract often arises on behalf one of the parties to the contract, but in special circumstances, it is likely that the implementation of mutual obligations, is vested with the individual. For example, if a lawyer, instead of paying his doctor accepts his advocacy, then this exchange is personal and agreement from the parties is deemed vested with the individual.

In addition to what was stated, generally lawyers applied test to identify and separate personal from impersonal contract and state it in the form of personal, objective and legal tests. Here the purpose of personal tests that due to the qualities and character of the contract party has such a property and will not be impersonal in their views. It is obvious that in such cases the parties with the inclusion of conditions in the contract or next agreement can eliminate this obstacle and make it impersonal. Sometimes, the test is objective that the attributes of contract party is important in some contracts and thus they are not transferable, for example, debt contract and credit sales are considered among these contracts. It seems that under this criterion, judging is by the convention and it determines which contract is related with the character, qualities and skills of the contract party and which contract has not such relationship. It is worth noting that some lawyers believe, the judicial authority can identify the type of contract according to the objective test and in this regard distinguished between gratuitous contracts based on charity and bilateral contracts and saying that different types of bilateral contracts is due to the lack of attention to the character of person and its impersonality (Katoozian, 2012: 1/466). In other words, personal bilateral contracts such as the contract are signed by a doctor or architect is exceptional and contrary to the principle.

Sometimes, this criterion distinction is legal and means that some of the rules such as Article 529 of the Civil Code about the sharecropping contract, or Article 497 of the same law, the possibility of contract transfer from the perspective of legislators are expected and accepted. In the latter article, the legislator stipulates that "the lease contract is not canceled due to the death of the landlord or tenant, and if the landlord only for his life time was the beneficial owner of the same lease, rent is void with the landlord die and, if with the condition of stewardship have been tenant, the tenant death fails it." So the article suggests that the nature of the lease contract is impersonal and there will be the possibility of transferring. However, in summing up the contents of expression should be stated that, since personal or impersonal contracts is not including the inherent qualities, therefore, the personal criterion in determining the above description is prior, so that the parties by stipulating the non-transferability of an objective or legal contract involving in individual contracts in which case the contract shall be considered as a personal non-transferable contract. As the parties to an objective or legal contract also can with transferability criterion ignored the impersonality description, unless in any of the above, the agreement contradict with mandatory rules, public order or good morals. However, in assuming the lack of personal criteria when mutual consent of the parties in this regard, neither explicitly nor incidentally, not even based on the circumstances of the case is not concluded should refer to legal test and then objective test. In English law by dividing contracts to personal and non-personal (Black, 1983: 171)^[19] only impersonal

contracts are voluntary or involuntary transferable; so the personal contracts will be excluded from the transfer. For example, when the insurance contract was signed according to driver attributes and skills and his ability to drive have been considered, the insurance contract will not be transmitted due to a personal contract (Treitel, 2003:611- Beatson, 1988:460) [29, 18]

One of the lawyers of the country to explain the personal contract states that a series of contracts are including personal contracts. In this contract cannot be expected that one of the contract parties do his obligations to his interest other than contract party. In such cases, the obligations interest of "A" is non-transferable. The clear example of this common law is the rule whereby an employer cannot transfer the obligation interests of his employee. (Treitel, 1989: 58) [27]

Some also believe that no one may be compelled to do something different from what it is intended to express, and any transition that put him in such a situation is void. For example, if the contract between "A" and "B" includes the personal skills, each party can insist on doing it just by someone else, because otherwise, they will not get it. So an author agreement to write a book to a publisher is a personal contract and the publisher cannot transfer its benefits without the consent of the author (Cheshire & Frumston 1972: 274-75) [20].

It should also be noted that the contract is questioned for personal or impersonal terms and there are serious doubts whether the contract is vested with the individual or not? British rights survey confirms both traditional and modern views in response to this question. From the perspective of traditional theory, a contractual right in terms of financial aspect is quite personal and is vested with the individual and therefore the transfer will be canceled. Yet, from the perspective of the modern theory, the principle is on the transfer of rights arising from the contract unless there is a rational reason for being considered a personal contract. (Cheshire & Frumston 1972: 276) [20]

The accuracy in the principles of international trade contracts, particularly the provisions of Chapter IX shows the only case that referred to personal aspect of the contract and its obligations is paragraph of article 6-2-9. The Paragraph stipulates: "obligor without the consent of the obligee can sign a contract with someone else, so the other person implement the desirable obligation instead of obligor unless the obligation in the circumstances of the contract essentially have personal nature [1]".

Thus under the regulation obligee cannot reject the implementation of obligation from third-party in all cases.

In other words, if a third party attempts to comply commitment instead of original obligor, there is no barrier and no prohibition in this respect, unless obligation meet the personal aspect and vested with the individual related to the competent, character and personal skills of obligor (Frey & Frey, 2001: 547) [22]. In this case and in view of these principles accordance with what is stated in the Anglo-Iranian's rights, this contract

and obligations arising from it shall not be transferable. It is worth noting that in accordance with the provisions of the contract transfer, assignment obligation by the main obligor to the third party is not done, but without the transfer, only third party will be committed.

For example, Company "B" undertakes maintenance of sophisticated technology equipment made by "A" Company and have been sold to the "C" Company and do it which have been on the "A" Company before and the partners agreed that the next annual maintenance will be performed by "b" Company. When technicians "B" reach to place of "C" Company, the "C" can refrain from their intervention in the maintenance work and consider this fact that because of the nature of highly specialized studies available, the company "C" has the right to called for the obligation of professional staff in Company "A" (Akhlagi - Imam, 1393: 433).

Consider the principles of Europe contracts laws suggests that a separate discussion in the eleventh and twelfth chapters of that document regarding the personal and impersonal division of contracts is not allocated and the distinction is not made.

It is obvious that the lack of predicting this issue is the agreement necessity of obligee with the transfer of original contract obligation to transferee in a way that when under the perspective of beneficiary of the obligation, the separation have been personal, not transferable to another and he will contradict with this assignment. However, personal or impersonal contract and obligations arising from it is important when a third party is seeking to execute the contract and its provisions instead of the original obligor. Article 106-7 of the principles on execution of the contract by a third party stipulates: "1. Unless in cases that the contract considered necessary the personal execution, the obligee cannot refuse the obligation by a third party."

So, as it is observed in the principles of Europe contracts law in line with the principles of international commercial contracts, personal or impersonal contract or obligations arising from it has been very important in such a way that when assuming vested on the individual, its execution even by a third party even without the transfer is ineffective and except with the consent of the obligee, such performance will not be the main cause of obligee acquaintance. (Lando & Beale, 2003: 339-40)

In reference common frame design of Article 109: 5 also the transfer personal rights of obligee in original contract is explained and pursuant to the first paragraph explicitly the right of comply obligation is deemed non-transferable if that right because of the nature or the relationship between the obligor and obligee of original contract is applicable against another person except the beneficiaries of the original contract non-transferable; thus from the viewpoint of document, the rights depending on the nature and main subject of contract or the relationship between the parties related to the obligee, is not transferable without his consent. This concept in many legal systems, including Germany, France, Belgium, Estonia and the Netherlands is acceptable and a standard practice. (Von bar & Clive & Schulte, 2004: 1057) [31]

b. Disagreement over the prohibition of transfer

According to the principle of autonomy and freedom of individuals in signing contracts and agreements, the parties can sign any contract that have tendency toward it with the inclusion of the desired conditions provided that the agreement have not been against the law practice, public order and good

¹. Article 9.2.6 (third party performance)

(1) Without obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation in the circumstances has an essentially personal character.

(2) Obligee retains its claim against the obligor.

morality. Therefore, in some contracts the person to reassure the play full of contractual obligations by the other party or keep their property up to the time or for any other reason forecast a condition; thereby obligor prohibited to transfer the contract to the third party and will not be allowed to transfer the contract to someone else. For example, in a tunnel construction contract, the contractor shall have no right to transfer the contract to a third party and cannot under any circumstances transfer their titles to another. Some authors (Sharyan, 2015: 261) ^[5] according to this argument that "In Iranian law, the principle is prohibition of transfer contract to another," know insertion of such a provision in the internal contracts is a superfluous and useless issue and considered its impact a strong emphasis on non-transferability of contract. Meanwhile, according to what is most noted with the exception of individual contracts vested with the individual and people as the effect of freely autonomy can transfer contracts and to others. Therefore, it is believed that the transfer of contracts should be considered as a matter of principle and lack of transferability can be regarded as an exception to it.

However, the condition of transfer contract may monitor the whole contract or supervise a part of it. Also this condition may monitor the right arising from the contract or govern the contract obligations. Also a lack of contract transferability may as the condition of prohibition transfer or stewardship condition be predicted and agreed by the base contract party.

If the non-transferability of contract have been as the prohibiting transfer condition, so the parties or any of them will be banned to transfer the contract. Obviously, this requirement is based on the principle of freedom of choice, and means that the parties to the contract do not want to change his opponent.

Regardless of the extensive and available discussions in legal nature and effects of transfer prohibition provision, the question that comes to mind is that the inclusion of such a provision means denial the right of transfer or the obligation to not-transfer?

If in the analyzing the above provision stated that the condition of prohibiting the transfer of contract means denial the right to transfer, then surely, every transfer is done despite the condition, will be null and void. However, if it is said that the condition is merely a commitment not to transfer, then it is nothing but a violation of the right which leave claim for damage to the other party. It is worth noting on the condition that prohibited the natural guardian of any transaction until reach the 18 years old, the majority of the Supreme Court know subject including Article 237 of the Civil Code and have considered void transaction contrary to the criteria with refund right (Ali Abadi, 149). It seems, inserting the clause prohibiting the transfer of contract is the denial of any transfer from him and the implementation of contract provision is by himself; so that the implementation of the contract by any other person other than the parties to the contract are not desirable to the obligee and not accepted. Yet in this case how to pay for the damage caused by the transferor breach compensate unfair imposition of transferee to the base contract party.

However, sometimes the lack of contract transferability is as the inclusion of stewardship conditions expressed in the contract, for example, the tenant should use the rental home mutually.

Accuracy in the Civil Code indicates that the meaning of the term "stewardship condition" in Articles 529, 497 and 268 of the Civil Code was confined to the implementation of

obligations arising from contracts; so that in some of contract, obligee in favor of thoughtful features and personal skills of obligor believes that commitment is on his behalf and not someone else, such as heart surgery, patient trust in certain physician to cure him so if another doctor undertake the surgery, the patient never satisfied to entrust him and give his body to his scalpel. However despite this fact, sometimes less often meaning of stewardship of contract party is demanding contract rights (and not obligations arising from it) as mutual. For example stewardship of tenant is using the lease where this type of stewardship governing the rights and not obligations in the words of landlord. In mutual demand, tenants will benefit from his rights because he does not want an alien use from his property.

Stewardship in contract, sometimes means stewardship condition and sometimes, indicating stewardship. When stewardship is as an agreed condition by parties, the violation of it does not cause invalidity of transfer; however it gives the other side the right to terminate the contract for breach of condition. However, if stewardship of contract party has been as indicating consent and contract, then the transfer of contract will be null and void. Study articles 529 and 497 of the Civil Code indicates that stewardship although as a "condition" stated but indeed as the "indicating" and stewardship tenant in vindication of benefits or supervision in the implementation of the contract, indicating compromise and the contract shall be considered. (Katoozian, 2012: 275).

The insertion of "stewardship condition", on the intention of parties to the lack of transferability questioned by some jurists (Tabatabaei Yazdi, 1420: 30; Hakim, 1404: 107) ^[17, 16] and lawyers (Imami, 1993: 2/79; Katoozian, 1984: 207) ^[2]. However, as a general rule it can be said that inserting the condition of stewardship in the contract prevents the voluntary transfer of contract and maintaining stewardship of the contract party, despite the fact that transfer contract from whom is something rare and exceptional because the primary purpose of contract transfer is leaving the transferor from the legal relationship and succession of transferee as him, so the transferee in addition to demanding rights be able to undertake commitments. Obviously, in this case, maintain stewardship and implement contractual obligations will be not coordinated with the ultimate goal of the contract transfer.

It should be noted that the condition of prohibiting the transfer of contract with the condition of stewardship is not the same and are different from each other (Sharyan, 2014: 262), but these two conditions are commonly conditions that usually contract parties along the transferability of contract use in their agreement and insert in the contracts.

In English law, one of the conditions of transfer voluntary contract is no agreement on prohibiting transfer, and thus lack of transferability has been much considered as the condition of transfer prohibiting (Michell, 1987: 172) ^[26] and in some cases, such as signing a rent contract, hire or in contractor contracts, the condition of prohibiting transfer don't prevent from the contract transfer by the parties or one of them to the third party. (Treitel, 2003: 610) ^[29] It should be noted that in the legal system of that country, insertion the prohibiting condition of transfer the lease contract is effective solely in respect of the voluntary transfer and has no effect in involuntarily transfer because in the last case, the transfer without the will of the tenant is done and the transfer of lease to the heirs of the tenant is not considered a violation of prohibiting condition.

Another striking point in this legal system is difference between personal contracts and vested on individual and the condition of prohibiting contract transfer, so the condition of prohibiting the transfer of contract will depend on the person and his free will. However, the nature of vested with the individual contracts and personal contracts depend on intellectual and rational factors and will be subject to it (Tolhurst, 2006:21) ^[28]. So in the legal system of England and as a general rule, the principle is the transferability of contracts (except for personal contracts and vested with the individual) and therefore if in the underlying contract, there are not any agreement based on prohibiting the transfer of contract, parties or either of them can transfer the contract to a third party. On this occasion, one of the English lawyers explains, if the contract stipulated that a particular right (eg the right of contractor to money in the context of a contract for construction) fails to transfer or without the consent of the employer cannot be transferred, any action without the consent of the employer and with the intent to transfer, will be ineffective.

In the principles of international commercial contract should be acknowledged that in accordance with Article 9-1-9 first part of the ninth chapter of document, if the issue of transfer has been money, despite the inclusion of conditions limiting or banning transfers, transferring ownership to the transferee will be right and correct; however, the transferor due to breach his contract committed in front of the obligor (the base contract party) and required to compensate for the damage caused ^[2]. In other words, the foregoing paragraph supports from transferor right against the condition of not-granting and considered assignment effective; however, since the transferor acted contrary to the duties of its contract, then in accordance with Part IV of Chapter VII of the principles should compensate the damage to the contract obligor due to not fulfilling their contractual obligations. For example, "A", who is a building contractor after the completion of construction, wants the amount of one hundred thousand dollars of «x» that is his client. On the other hand, the contract contains a condition of prohibiting "A" in the assignment of right to the party. Nevertheless, "A" gives his right to "B" which in this case, "B" can despite the condition of lack of assignment and transfer prohibition, after the maturity demand for payment from «x». Nevertheless, «x» could claim against the "A" due to violation of condition and claim damages due to incur losses. (Akhlaghi - Imam, 2014: 404) ^[1]

The accepted principle of non-monetary rights is different with the assignment of monetary rights in accordance with what has been said. According to the second paragraph of Article 9-1-9, the principles ^[3] of the rule in this type of law is that the condition of non-transfer (restrictions or prohibition) against transferee is right and such a transfer shall not be valid financially. Of course, if it can be proved that at the time of

transfer, the transferee not was aware from the condition of assignment and should not be aware of its existence basically, then in this case, the assignment have been correct and valid and the condition restricting or banning the transferee (third) has not been effective. It seems that the basis of this regulation is considering the principle of good faith in contracts and staples rule that allows the third party rights remain inviolable. (Von bar & Clive, 2009: 347) ^[30]

For example, the company «X» agreed with "A" that informs all the quality improvement that will create in a technical process over a period of time to the company "A". The contract stipulated that the rights of "A" Company against «X» cannot be transferred to a third party. Sometime later, the need of Company "A" to the desired technology has been eliminated and the company intends to transfer its rights to company "B". According to the latter provision, it is not a correct legal transfer and «x» Company will not be committed against "B". (Akhlaghi - Imami, 2014: 405) ^[1]

The principles of contract law in Europe and Article 103-11 explained partial transfer and decreed that: "Biodegradable right could partially be transferred, but the transferor is responsible against obligor for any additional costs that are incurred by obligor ^[4]".

On the one hand, the provisions of the principles as principles of international commercial contracts with the division of monetary and non-monetary issue has assumed that monetary rights is dividable and usually causes particular problems in the execution of the contract and therefore not transferable.

The non-monetary rights are dividable when it is assumed that the obligor could pay separately transferred part (Sharyan - Torabi, 2012: 386). Distinction between principles of international commercial contracts and Europe contract law principles in this part is that in accordance with paragraph 2 of Article 4.1.9 of trade contracts, transfer non-monetary rights due to the lack of heavy burden of debt has considerably committed on the main obligor which unforeseen in the principles of contract law in Europe.

In the common reference frame as well as contract obstacles or restrictions in the base contract does not prevent the transfer of rights to the third party, because the first paragraph of Article 5: 108 expressly provides that contract obstacles or restrictions does not affect the possibility of rights transfer unless about personal rights which the consent of the base contract party will be necessary; on the one hand, according to the Article of first paragraph 5: 203 in international document, for assigning commitment and replacing a new committed, whether complete or incomplete, satisfying a obligor and base contract party is necessary. However, since in transfer contract, all rights and obligations arising under the contract transferred by a base contract party to a third party, therefore, in accordance with the provisions of the common frame of reference, the agreement of base contract parties will be critical. That is why in the first paragraph of Article 5: 302 and in explanation how to transfer contractual position stipulated that "a contractual party can agree the third party with the consent of the other party, to be his successor in the contractual relationship." So when the contract involves the provision of prohibiting transfer, this

². Article 9.1.9 (Non-Assignment Clauses)

(1)The Assignment Of A Right To The Payment Of A Monetary Sum Is Effective Notwith-Standing An Agreement Between The Assignor And The Obligor Limiting Or Prohibiting Such An Assignment. However, The Assignor May Be Liable To The Obligor For Breach Of Contract.

³. Article 9-1-1 (2) The Assignment Of A Right To Other Performance Is Ineffective If It Is Contrary To An Agreement Between The Assignor And The Obligor Limiting Or Prohibiting The Assignment. Nevertheless, The Assignment Is Effective If The Assignee, At The Time Of The Assignment, Neither Knew Nor Ought To Have Known Of The Agreement. The Assignor May Then Be Liable To The Obligor For Breach Of Contract.

⁴. Article 11:103: Partial Assignment

A Claim Which Is Divisible May Be Assigned In Part, But The Assignor Is Liable To The Debtor For Any Increased Costs Which The Debtor Thereby Incurs.

provision is effective and bans the transfer, so the contract because of the nature of the play, or by the relationship between the parties to the original contract is not enforceable against another person, otherwise transfer prohibition condition will not affect the assignment of the contract. (Von Bar & Clive, 2009: 347)^[30]

c. The capacity of the parties in the transfer contract

The transfer contracting parties, whether natural person or legal entity should have the necessary capacity to transfer the contract, the assignment of rights and obligations arising from it. In the legal culture, the capacity means person qualification for having right tolerates duty and exercises the rights that the person has due to the law (Jafari Langroodi, 1993: 97)^[3]. In other words, the purpose of capacity is the qualification that the person has for the implementation of right (Katoozian, 2011: 1.6)^[10]; That is the capacity enjoy twofold of fruition or ownership and vindication or possession. Regardless of the definitions and differences between the two types of capacities that define it is outside the scope of this article and there is not an opportunity for it, whatsoever in the discussion of the voluntary contract is noteworthy and its presence is fundamental pillar of transfer is having the capacity of vindication for transferor and transferee. Thus, in accordance with the second paragraph of Article 190 of the Civil Code and Article 210 of the same law, having vindication capacity for contract parties is one of the accuracy conditions of transactions which deemed necessary. (Safa'i, 2015: 2/115; Shahidi, 1998: 23)^[6]

Given the difference in the legal effect of lack of influence and the invalidity of Contract for transfer, the question that comes to mind is that under domestic law, in what cases the transfer of contract coverage the lack of influence and need to enforce and in what cases falling under full invalidity?

Compare Articles 213 and 212 of the Civil Code and reviews and analyzes carried out (Katoozian, 2011: 114)^[10] regarding the article indicates that the transfer contract involves the transfer of both rights and obligations arising from it and elements of the original contract to the transferee handed. Therefore, in terms of 1213 and 1212 of the Civil Code should be believed that the transfer of the contract by minor persons and insane persons subject to nullity and discerning minors is subject to no influence in the way that legal representatives in accordance with the peremptory norms will be allowed to ratify or reject the assignment. (Ibid: 120)

In English law as well as people who have not full capacity to contract enjoy legal protection and thus the capacity vindication is considered one of the conditions of validity of the transaction. (Treitle, 1989: 243)^[27] The study of legal system suggests that the contracts concluded by minors are divided into three categories with different legal effects that do not have the same qualification and consequences.

First category: the valid and binding contracts and despite the lack of capacity to minors, it is binding contracts and a source of legal books. These contracts are contracts that are signed for necessities of minors such as food, clothing, housing, or are profitable service contracts. For a contract validity and provide necessities signed by Minor, it is deemed to have two conditions: first, the goods and services should as a matter of judgment be needed and second, the goods and services as a matter have been really necessary. Other valid and binding contracts are profitable service contracts that signed by a

minor, such a good apprenticeship contract, etc. So if it is considered reasonable for the minor and in the interests of his will be binding.

Second category: they are apparently valid contracts but are voidable; means until the contract is not void, its rights and obligations arising from it could be demanded and obligor required complying with contractual obligations. This category of contracts involves permanent ownership and commitments are included. They are including contracts relating to the property (especially purchase or rent), subscription contracts, buy company stocks, civic engagement and dowry contracts.

Third category: they are absolutely void contracts which are not considered correct. Under the law of compensation minors Act of 1874 (Infant's Relief Act 1874) all contracts, either formal or informal, hereafter signed by minors for the refund of duties or the money they have lent or for goods supplied or goods that should be provided (except necessities) and all statements declared (accepting commitment) for minors, is absolutely void.

So, as can be seen in the legal system on the basis of the above categorization, the presence of vindication capacity for the parties to transfer contract and assignment of both rights and obligations is necessary and acknowledges by the law and jurisprudence (Treitle, 1989: 244)^[27].

Review of principles in international trade contracts reflects the fact that although in principle, contrary to the reform plan of French commitments rights (Pierre Cathala), an independent chapter and article is not dedicated to capacity of the contract parties, but of course for those principles can be inferred that from the perspective of the international document regulators, the contractual Capacity to the parties and having vindication Capacity is an absolute and fixed criteria. For example, Article 1-4 discussed in this document stipulates that: "None of these principles are not restricting the rules applied in accordance with the rules of private international law, whether national, international or transnational origin".

Also in accordance with the first paragraph of Article I of Chapter IV of the document, the contract should be interpreted in accordance with the common intention of the parties. The use of the term "common intention" indicates that in the voluntary transfer, the parties should have the will and intension to create legal relations in contract. It is obvious that the intention of creating legal intension is on the vindication party and as long as the person does not meets the qualifications and traits; the intension to create legal relations for him would be impossible and improbable. (Jafari Langroodi, 2008: 89)

Principles of contract law in Europe as the principles of international commercial contracts without allocating chapter or Article to the capacity of the transfer contracting party are considered binding internal, international and transnational rights norms particularly under Article 1-103, so according to some commentators, the rules of this international document is applicable only when not in conflict with competent national law. However, since according to national rules, having the competence and capacity to the voluntary contract is necessary and its observance is non-avoidable, therefore, it can be concluded that from the perspective of those principles, the presence of possession competence is considered one of the pillars of voluntary contract.

In addition to the above Article, we see another example of contract law in Europe in the first clause of Article 101-2 of a

document which stipulated: "Terms of the contract 1. The contract is concluded when: a) The parties intended to be bound legally ... ^[5] " Therefore, there is a deliberate intention on trading shows that the contracts assignment capacity is assumed and is a certain and non-dialogue regulation (Lando & Beale, 2000: 135-37) ^[23].

Discuss common frame of reference also indicates that the subjects mentioned regarding the two international document mentioned is also applies in this scheme, and the capacity of possession is inevitable and inescapable due to identify the body of voluntary contracts in this document.

d. Transfer contract follows a basis contract

One of the basic conditions for the transfer of contracts is the valid and correct contract. A contract that rights and obligations arising from it have legal effects and the parties obliged to perform rights and obligations. Contracts in different directions and credit including in terms of economic value (compensation and non-compensation), in terms of the effect (purchase and covenant) in terms of the quality of composition (suspended and definite) in terms of durability (binding or voidable), and so on are divided and recognized. (Katoozian, 2011: 34 onward) ^[10].

One of the alternatives in division the contract is the conclusion formalities. From this perspective, formal contracts are divided into two categories of dissent and formalities contracts. According to some, formal contracts are contracts that signing it should be done with the formalities or by saying specific terms (ibid: 35). Some legal experts know objective contract among the formal contracts (Shahidi, 1998: 87 ff.) ^[6] and some other know objective contract (such as donation- endowment) including formal contracts (Imami, 1993: 174) ^[2].

Induction in domestic law and statutes indicate that except for rare cases, since any contract upon mutual consent of the parties was signed and, words are expressing will not condition of its influence, therefore, believed that the principle is on the consent of contracts and in the case of doubt about formality or non-formality of the contract, we should consider the consenting of contracts and assume formality as exceptions.

According to the above argument and division taken and with regard to this fact that regulations has not used specific formalities to transfer the contract; therefore, it can be believed that the contract transfer is a consent type in principle and does not require special procedures unless the basic contract have been formal itself. In other words, since the transfer contract on any ground, including the formalities is depended on the base contract, therefore, if the base contract is considered formal, the transfer contract will be formal too.

The examples in the last paragraph of Clause 2, Article 19 of the Law of Landlord and Tenant Act 1356, which stipulates: "The right business or trade is devoted to the tenant of the same place and transfer it to the new tenant will be valid only by official document." So as this provision refers, the transfer of goodwill to the new tenant needs the official document and comply with the formalities to establish the validity of the lease contract transfer is binding and necessary. However, in judicial practice, some court judges do not know the validity of such

transfer subject to regulate an official document (Nobakht, 1991: 245) ^[15].

Nevertheless in English laws, the transfer of contract based on fairness does not requires special formalities and is quite on consent in such a way that even oral transmission of contract is accepted and such action is deemed valid (Beatson, 1988: 450-511) ^[18]. However, according to the property rights law enacted in 1925, the legal transfer is formal and requires document regulation. For example, in the legal transfer of leases contracts, set the document is an binding and necessary issue with this view that the transfer of immovable property or any interest thereof without setting document is void and the realization of transfer shall be subject to writing and organizing the document (Treitel 2003: 679) ^[29].

In principles of International Commercial Contracts, the basis is also on consenting in basis contracts and transfer agreements and formalism except in the national, international and transnational law is rejected and not accepted. Hence, Article 1-2 of that document under Article 1-4 provides: in none of these principles has not been established that the contract, statements or any other act to be done in a certain way. Cases mentioned by any means, including witnesses, can be proved. " It is obvious that this principle in many legal systems particularly in the field of international trade due to the presence of new communication instruments has been accepted and many transactions which quickly and with the combination of correspondence, fax, electronic message Email, SMS signed are very convenient and effective factor in facilitating trade and speed up transactions (Dobson, 1997: 150-5) ^[21].

It seems that deal with this argument that transfer contract is based on the consenting and comply with the basic contract, only in cases where it is deemed formality contract, the transfer contract will be also formal.

Study principles of contract law in Europe and the accuracy of the Articles confirms similarity of two documents in the absence of formalism in transfer in the way that, Article 104-11 of the rights transfer stipulated that: "Transfer do not need to be in writing and is not subject to any condition other way. Transmission can be proven in any way, including testimony. " Therefore, it is observed that in view of this international document, there is no limit to the form and proof of fulfillment transfer (Lando, Clive & Zimmermann, 2003: 28) ^[24] and the principle is on consenting transfer contract following basic contract unless the basic contract be considered formal.

In the plan of common frame, almost the lack of formalism as what discussed in the two previous document considered by regulators in such a way that Article 5: 110 discussed basic contract and subsequently transfer contract and expressly states that transfer can be achieved by virtue of a contract or other legal action, unless the contract by itself, is subject to special rules. In other words, the general principle was adhered to in this document is that, it is not necessary the terms of the transfer be in writing or otherwise, except in special cases such as gift (Von Bar & Clive, 2009: 507) ^[30]. In other words, the principle of consenting transfer is accepted in common framework; so that if basic contract is not diagnosed consenting and formal, the transfer contract is also subject to it and be deemed consenting.

Conclusion

1. In the British legal system, contrary to Iranian law and international documents studied, assignment of contract is

⁵. Article 2:101: conditions for the conclusion of a contract

(1) A contract is concluded if:

(a) The parties intend to be legally bound, and

(b) They reach a sufficient agreement without any further requirement.

- not the transfer of both rights and obligations and obligations under the basic contract as assigned considered whether the transferee accepted the obligations or the type of legal relationship in the way that demand the legal rights of original contract subject to fulfillment of obligations emanating from it.
2. In the studied legal systems, the principle is on the transfer of contracts, so with the exception of contracts that according to their own nature is personal and vested with the individual, other contracts are transferable. In this regard, personal, objective and legal criteria are a criterion for differentiation of personal contracts from non-personal contracts; so that personal criterion is considered prior to legal and objective criteria. In case of doubt on the personal or impersonal contracts, the principle is on the impersonality of the contract and transfers it to others.
 3. The base contract parties' agreement on the prohibition of contract transfer is effective only on the voluntary transfer and prevents that type of transfer in such a way that the condition makes no problem to the involuntary transfer. Also, the condition mentioned in the Anglo-Iranian rights is considered stewardship condition and denial the right of transfer and the behavior of every basic contract parties contrary to the mentioned condition lead to invalidity of transfer. However, international documents studied by adopting a different approach unlike Iranian and British laws are divided the contract subject to monetary and non-monetary condition and were not known identical the effect of prohibiting the contracts transfer and know it with distinct effects. As described in monetary conditions despite the insertion of such agreement, concession contract is considered valid and will not be hindered; however, if the contract have been non-monetary, insert it as a basic premise condition prevents the transfer of contract and the fulfillment of transfer does not give rise to any effects for the transferee, unless the transferee prove that he was not aware of the condition of transfer and not in principle have been aware of it. It seems that this division was based on a rational and common issue and to protect the rights of the non-variable contract party can be applied in domestic law and thus the condition of "disagreement and transfer prohibition" can be flexible and adjusted.
 4. In all legal systems studied, the principle is on non-formalism and except in exceptional cases, transfer contracts does not need to comply with the form and special formalities. Thus, in the case of formality base contract, the new contract and the transfer contract fully abiding base contract and subject to it fully.
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