

The rule of action in guaranty and civic responsibility

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Abstract: The rule of action is one of apparent rule in jurisprudence which has an important role in guaranty and civic responsibility. Guaranty is divided into contractive and Qhry. In contractive guaranty, responsibility is included in contracts and in Qhry it is out of contract and it is created forcibly in charge of person. Also guaranty is divided into Fake and Real one. Fake guaranty is a Msmy guaranty in which a person undertake to pay off the value and change of goods that he bought, with the same characteristic and material. Real guaranty is a like or price one in which an order of judge for proving property of someone in another Zmh is bring up. In first division Qhry guaranty is gain without story and essay of judge and law. In this way the rule of action can be examined in two meaning: an action for guaranty or loss. An action to guaranty cause Qhry guaranty. Here the loss as a result of guaranty a responsibility can be compensated. The instance for this is Mavzy contract in which the contract is invalid and taking money is not supported by Shari and laws. Daye of other person is lost and like guaranty or price being raised. Because with awareness do the invalid contract and cause guaranty and an action to loss which is a Muscat of Qhry guaranty. Jurisprudence principle from this narrative: in permissible transaction with awareness and result of loss, it can't be demanded by curious and is a Muscat of Qhry guaranty.

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1. Introduction

The rule of jurisprudence, which is a general verdict of jurisprudence, is a source of inferring limited rules and base of different laws. They are general institutions and foundations of jurisprudence and because of generality and inclusiveness are used by jurist or lawyer in different cases.

Now the example of no damage which is a provision of denied damage is a topic of my article and inclusion of apparent rule of jurisprudence is cited by Shari and law. Any action which is done by person is a guaranty of correct principle and a way for which there is a special provision in jurisprudence and Islamic law. Example of contract is sale, Ayqat such as divorce and Abra, personal moods such as Nshvz in marriage.

Now the rule of action has a special place in guaranty and civic responsibility such as cause of creation and resolver of guaranty, and its jurisprudence rule is clear. I do research in this rule to allow the reader and especially judges and lawyers to use the material. God willing be beneficial.

2. Expression of topic

Rule of action is used in guaranty and civic responsibility and basically is a

Msqat of Qhry guaranty. However its instances are found in obligations of Qhry guaranty and can be utilized in all of the contract obligations,

condition and Aygat. Especially in marriage contract and Nshvz of women disposed the right of alimony or in Mavzy contract. Defective Mby with awareness of buyer, cause dropping the right of option of defect and losses resulting from defect cannot be claimed. Like them the rule can't be explained.

3. Research hypothesis

Civil right of Iran was taken from rich and dynamic jurisprudence which meet the human needs. The rule of jurisprudence with title of general rule of jurisprudence can be adoptive with issues and details. These are lawyers and judges who can solve problems and differences by understanding of raised issues with specific rule of jurisprudence like the principle of rule of action.

4. Necessity of research:

We believe God with legislation of anatomical and developmental rules, trace the bliss of everyone in this world and Hereafter. Every man in this world can search himself. Also in law science and Islamic jurisprudence, everyone can demand his right from jurisprudence references and current rules. Rule of law is document and tools of every person. In this regard the rule of action can express his own opinion about demand and wishes of every person. In this respect, I need to give researcher complete evaluation and research.

5. Background of research:

Many jurists and scholars of Islamic law and jurisprudence were entered in this field but briefly pass the rule of action. Specially Fatah Maraghy owner of Anavin, Dr Mohageg Dama, owner of the rule of law.

6. Method of research:

In writing of this research receipt of library operation and descriptive was used and copy and book of them was made. I used and exploit the library of Ayatollah Marashi Najafi, information bank of Qom, book garden of Qom which is a center of publication and research of Hozeh. For paying the rule of action, at first we need to know the guaranty and place of it. To clarify the subject we need to have a brief familiarity with guaranty.

1. Guaranty in word and phrase. Meaning of guaranty in word is to bail out, accept and being obliged. In norm it is applied as an establishment and fixation of something in validity world by guarantor.

Sheikh An sari writes idiomatically: guaranty of something is to guarantor and its damage is on him.

7. Forms of guaranty:

A) Contract guaranty: the purpose of contract guaranty is a guaranty that is caused by contract. This kind of guaranty has two states too. In first state the contract is not directly owned by guaranty contract but in proper Mavzy contracts in which the main purpose of contracts is trade or completion of something, guaranty is itself supplies. If in selling contract, seller and buyer are guaranty of each other, seller being committed to surrender sale and buyer being committed to pay off value.

This kind of guaranty which is used in Mavzy contracts is known as a Mavzy guaranty. In second state, guaranty is directly belonging to contract and the main purpose of contract is guaranty which is referred to the guaranty contract.

Most of the jurists defined the guaranty like this: legitimate security contract to pledge money or the same.

In Article 684 of civil law of Islamic Republic of Iran, guaranty contract is to undertake the property that is obligation of someone else and promissory is guarantor, other party is guaranty and third party is content of his or her main indebted.

2-Forcible guaranty: purpose of forcible guaranty is the responsibility for doing affair or compensation of damage which is gain without any contract between parties in forcible state with judge's ruling. Some of its materials were said in Article 307 of civil law such as a confiscation, waste, causation and fulfillment.

8. Forcible guaranty is two kinds:

A) It cause forcible guaranty and in this state guaranty or responsibility is forcibly belong to a person such as rule of waste and vanity.

B) It is a Mosqt of Qhry guaranty in which guaranty or responsibility that is forcibly belong to a person, led to damage and dropped . for example the rule of Estihan and Ehsan.

9. Position of rule of action in guaranty and civil responsibility:

The rule of action is mainly used in forcible guaranty because it is done out of independent and certain contract with action of person. So that it is mostly discuss as a Mosqt of forcible contract not causation of forcible contract.

1) Rule of action for guaranty:

If non owner of property do an action for guaranty of property of someone else, cause guaranty and its instances is said in current laws.

In Article 221 of civil law if someone undertake to do an action or refrain from doing something, in state of violation is responsible for damages of other party.

In Article 256 of civil law when someone transfer his own and others property with contract, or accept transferring of his own and others property, transaction to him is penetrating and for another person is pry.

Here in non pry state, because with awareness do the transaction of non mine property, is responsible and guarantor of non mine property.

In Article 673 of civil law , if the lawyer who doesn't respect the substituent entrust doing of action in which he has an attorney to third party the lawyer and third party are responsible and guaranty of damage to client.

Here because the lawyer with awareness and without right of substituent delegated the power of attorney to third party, is responsible. Because with his own action do this and cause guaranty.

10. Attorney evidence for the rule of action:

This rule is raised as a proof reason for" what's true is seductive, its corruption is seductive too and what's true is not seductive its corruption is not seductive. Here it means that every contract that's true because guaranty and its corruption cause guaranty too. Every contract that's true don't cause guaranty, its corruption don't cause guaranty too.

The meaning of principle rule is this: every contract which is true, require the receiver to pay change to other party. If it was corrupted, receiver of guaranty object is grasped suppose that he reject the existence of principle property. In assume of waste,

pay off its like or price. Vice versa of rule is this: every contract which is true, don't cause provision of property instead of labeled and doesn't have a guaranty. Also the contract is not completion or permission and for the reason of not being free of completion, its corruption doesn't guaranty the receiver to pay allowance.

According to this reason rule of action (rule of action) everyone who gains property by transaction, also obligated and committed to surrender of price or change. In the other words do commission and guaranty.

This kind of commitment flow in Mavzy contracts which is remembered as forged or appellation guaranty. In this guaranty a person committed to pay the change which is determined in material, description and amount of features against the objective that is received from another person. Now if the contract was corrupted and its cancellation is discovered, application guaranty change to real guaranty which is a price or like guaranty. The purpose of real guaranty is a ruling of judge for proving someone's property in another. Obligation and requisite for this proof is this: if the essence is remaining, reject the essence by itself. If the essence was wasted rejection of like or price, which is a real change of goods among wiser, is necessary. A reason for guarantor to be guaranty in corruptive contract is that he does the action by himself. And this action causes the proof of responsibility in guaranty. In other words receiver while entering the transaction, accepts to receive a property and pay its change without purpose of gaining property freely. But now that transaction was corrupted and change of appellation voided. If essence in his hand was wasted, he is a guarantor of like or real price.

Now in Mavzy contracts, receiver is obliged to pay a change against the benefit which he receives. In other words don't freely and without offset catch the property but his action to catch was Moavaz. So that in contract and true transactions undoubtedly, commitment and obligation to pay appellation change for parties according to the contract is binding. But if the contract is corrupt, parties or one of them check out the property from other party because the contract is not supported by judge and law. Appellation change would not be a liability of them. If the property being delivered and Dryh was wasted, guaranty to like and price being raised.

Now the word is this: guaranty is documentary to what? Jurisprudence documentary of guaranty is an action to guaranty. It means that receiver at the time of delivery of property doesn't intent to receive it freely, rather in front of paying

change wanted reception and his will is guaranty of property. This will is known as an action to guaranty.

With this description, an action to guaranty is a fixed document of real guaranty for which there is a difference among jurists. Sheikh Ansari in Mkasb page 103 and Akhond Khorasani in margin to Mkasb page 301 and Haj Aga Reza Hamadani in margin to Mkasb page 51 and Imam Khomeini in Alby volume 1 page 403 believe that the rule of action can't be a document of guaranty. An important point of view for owners of this opinion is this: firstly Mtbayyn in corruption contract don't intent to guaranty the real price because the parties do the action with belief of health contract and have intent to appellation change not to replace of ideas.

Secondly: with suppose of this intent and will, the fact that only intent to guaranty cause guaranty is without valid legal reason.

Commitment to guaranty is binding when it is in the form of legal contract or Aygat. For example when someone do Hyazat for one of permissions and intend to obliged for paying like or price of that property to someone else.

Undoubtly only with this intent he is not guarantor. Vice versa laid in statues in another property and don't intent for guaranty and his purpose is free using. Undoubtly he is a guarantor.

Some of jurists know the rule of action as an independent and documentary reason for guaranty. For example Shahid Sani IN Masalek Al-Afham volume 4 page 56 and Saheb Javaheri in Javaher Al-Kalam volume 37 page 176 and Alameh Nayebi (Amoli-Mohammad Tagi -Albya page 306) and Seyed Ali Sabzvari in Mahzab Alahkam volume 16 page 253 believe this. An important reason for this is the intent of parties which is belonging to, and keeps an amount of wealth taxes. This is like or price. If in transaction there is a reminisce of certain amount of value or Mossman, it is the same amount in Bob path and collection. So that we shall not assume an action situated in appellation and don't remain any payment for like or price guaranty. Rather an action to provision of real change was done. Appellation is a way of reaching to it. The result is this: in guaranties, principle is the same with like or price unless it is proved in special way that appellation has a subjectivism even in corruption of contract it is become clear in with this justification. The intent of parties belongs to real guaranty and they know the change as a way of reaching to reality.

Now it is turned out that corrupt transaction override depressing guarantor only aborted by appellation change. But the base of guaranty and commitment is in his own place. If the essence is remain, reject itself and if wasted its like or price was guaranteed.

So that the rule of action is a base for guaranty and the responsibility of person who gain property by corrupt contract is his own action. Because he does corruptive transaction and delivery of property with possibility of guaranty by himself. The parties to transaction intended to gain another property in form of Mavzy and don't be free. So that if the transaction is true every party is guarantor of property of another party and the topic of guaranty is a change which they have determined.

Rule of action in appealing of forcible guaranty: owner disposed respect to his own property. Namely if the owner launch his own property to be captured in gratuitous way, this action is Msagat of guaranty and if someone in this state capture his property, this capturing don't cause guaranty.

Jurists know the rule of action as Msagat of guaranty.

11. Evidence for authority in rule of action:

A) Downfall of respect:

Main reason for guaranty of property is the respect to human property. This means that human property, rationally and legally was respected and everyone who is owner, his property is a respect for him and nobody has right to capture it freely or trespass to another property. This topic is raised in books and jurisprudence references.

An Important document for rule of respect to human property is some of narratives which are in different ground of jurisprudence. Other is the base of ration alls. It is narrated hadith of Abobasir quoted by Imam Baqir. Messenger of God said: curse of faithful is disobedience, fighting with him is infidels, eating his meet by backbite is sin and respect to faithful s property is like a respect to his blood.

Rule of respect especially the end of this narrative is derived. Particularly property of Muslim which is likened to his blood, indicate the intensity of effort to the respect of Muslim s property.

Other document of this rule is a respect to the base of ration alls and definitive Sire. This means that human property is respectable and without permission of owner its possession is not permissible. If someone possesses property of another without his permission, be reproached by ration alls and holy lawgiver rejected this Sire too.

Now if the owner himself launch to downfall the respect to his property, evidence of rule of respect will not include of this state and don't be a trust for guaranty of property.

Reason for guaranty of property is respect to property and right of ownership. So when owner put down this respect, overthrow the guaranty by him.

Owner of Anavin said that cause of guaranty is respect to property. Holy prophet said that: as the body of Muslim is respectable his property is respectable too. Now if someone with his own desire waste property or give it to another without change, destroy the respect of property himself and can't know another person responsible and guarantor for it.

b) **Narratives: narratives indicate permit of Wahba**, gift, Abajh and Tbry use of another principle and if someone overthrow respect to his property, is according to this narratives in which the use of other property with title of Wahba, gift and so on without change and compensation, is permissible.

1- Narrative says: possession of another property without his permission is not true. Someone who launches no guaranty means that he has satisfaction about another s gratuitous possession in his property. So its content is this, when the owner of property with his own will and satisfaction and without change, give it to another person can't expect guaranty and responsibility from him.

2. Narrative about losses and Zarar especially in the case of Sadr- Ansari with Sohrat ebn jonob, holy prophet (pbh) in addressing to Ansari said: go, avulse tree and throw to him because there isn't any loss or Zarar. According to this Hadith of holy prophet (pbh), because owner (Sohrat ebn jonob) by his cruel manner with neighbor (Sadre- Ansari) , launch to drop the respect to his own property and commend to drop the respect to his property too.

So, it meant that guarantor of person is to prevent loss of owner. Handling losses to another is not allowed legally. Now if the owner launches loss against himself, there isn't any reason for another person to be his guarantor because of respect to his property or eliminate losses from him.

3. Consensus: where the owner launch losses against himself, in this state jurists have consensus. As in numerous cases and different problems because the owner launch losses against himself, they commend no guaranty.

12. Sewerage and instances of rule of action:

According to the rule of action, there is a command to drop guaranty in cases which is pointed below:

a) If the customers with awareness of defect of Mby launch to buy, he doesn't have authority for defect. Generally, one of conditions to fulfillment authority of defect is ignorance of customer and hiding of defect at the time of transaction. Also if the customer is ignorance of being in hire of Mby, has right of authority. But if was aware, doesn't have authority for cancellation. Reason for no authority is customer.

b) Civil law in article 436 provide that if salesperson avoid defects of Mby and responsibility of defect withdrawn from him or sale it with all of defects, in emergence of defect the customer has right to refer to salesperson. And if salesperson avoid special defect, doesn't have right to refer only for that defect. Drop defect authority of customer in assume of avoid of salesperson is a result of action because defect authority is documentary to it. The customer is affected by Mby so that lawmaker supported him. However someone who launch sale with assume to avoid salesperson, losses up. But this is a loss that he causes by himself and accepts its danger, so that doesn't support.

c) If mature and wise person do transaction with crazy or minor and do the exchange, immature person who receive change from mature is not guarantor. Because mature and wise person by himself launch dropping of guaranty. Also if you deposit goods to crazy or loan him, there is two reasons for no guaranty: one is an action and other is to know him honest.

d) Someone who drops his property into the sea to hunt, then turn off, there isn't guaranty of property for his action. So, if someone finds his property from sea, he isn't guarantor to return it to the owner.

e) If couple are books (Jewish or Christian) and women become Muslim before intercourse, the contract is canceled and woman doesn't have right of dowry. Because becoming Muslim of women canceled the marriage and his right of dowry was dropped.

f) If someone bought goods from seller, knowing that he isn't owner, then the owner doesn't validate the transaction and value wasted in pry seller, buyer cant refer to pry seller for receiving substituted value because with awareness do the action.

g) Recalcitrance of women, if the woven become protuberance, cause dropping the right of alimony from husband. In this state she doesn't have the right of referring to husband for receiving alimony because she launch drop of right by herself.

13. Conclusion:

Principle is this: in sacred religious of Islam there is a way and rule for every problem and for all

subjects of jurisprudence such as sale, rent, attorney, juala there is commend and total rule. Details of current and needed contracts can be adopted with general issues of rule of jurisprudence. Also the rule of action is flow in details of jurisprudence that are being caused by loss in responsibility and guaranty. In one dimension it isn't recoverable and in another dimension irrecoverable. This use of damage which is created forcibly can't be demand religiously and logically. The reason is the rule of respect that is said total and partial problems with significant principles of jurisprudence and obliged it. At last disagreement was finished and its instances are in civil law.

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