

A comparative study on commission agent in United Kingdom and Iran

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Abstract: We all know there are many types of agencies in the law of commerce and we know that they are important in the commerce of this century. One kind of agencies is commission agent. We want to make a comparative study on this topic in the law of two countries, United Kingdom of Britain and Iran, as we will see below. We choose these two countries, because one of them, I mean united kingdom is a common law country and Iran has civil law, and this distinction will make this study more attractive.

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1. Introduction

In commerce, we faced with some situations in which, traders need some agents to do some work, and it is obvious that trader and commercial institute cannot continue their work without agents. There are some different between kinds of agencies in the law of United Kingdom and Iran. For example in British law we faced with agent by estoppel which we have not such an agent in law of Iran. But commission agent is applied in the both mentioned law.

I want to notice that commission agent has more background in Iran, rather than United Kingdom. The mentioned agent is an important agent and has an important role in today's commerce.

2. Commission agent in the law of united kingdom of Britain

The principles of commission agent in United Kingdom is defined by Lord Black born, which is described in the case related to the dispute of Ireland and Livingstone. (1). In the mentioned case is defined that by a commission agent we make a relationship between principal and agent and also agent and sellers.(2). In this kind of agencies, commission agent by some goods and sells them to principal and get commission. (3)

2-1. capacities of the commission agent in British law the capacities of the agent is provided into two kinds:

- A – Actual Authority
- B – Apparent Authority

In Actual Authority, Authority of the agent is achieved by an agreement, which the agreement can be express or implied, but in Apparent Authority there is no agreement between agent and principle. In this kind of Authority, the relations between principal and agent shows to third parties that they believe that he or she is his or her agent. In this situation the principal should accept the result of his

behavior and cannot deny this agent against third parties. (4)

2-2. Responsibilities of the commission agent for principal

A – Performance of Duty

A commission agent like other agents should perform his duty in accordance with the agreement,(5) and should do his duty as the agreement which he signed.(6)

Also a commission agent just like a lawyer or consultant should inform the principal about the goods, situation of the market, selling and buying, etc. (7)

For example in the situation in which a commission agent should buy some special stocks, if he buy some other stocks, he is responsible against principle but if the principle let him to buy some stocks among some kind of stocks and he buy one kind of them and pay enough attention and do his duty correctly he will not be responsible against the principle (8) although at the end the process, they find that the profit of other kind of stock will be more. A commission agent should obey the legal rules and also obey the directions which are provided by the principal, (9) and if the directions is not logic or correct he should inform the principle and discuss his reasons. We should pay attention to this topic which describe that a commission agent just like other agents should obey the custom (according to the work which he should do, international or local)(10) we should pay more attention to this topic In the law of united kingdom, because as we mentioned in the introduction of this article the law of united kingdom is based on common law. But if the mentioned custom is against the items of the agreement made between the commission agent and the principle, the commission agent should do in accordance with the items or articles of the

mentioned agreement.(11) it is obvious that some rules of the law cannot be dismissed by parties of the agreement and we do not want to say something against these rules.

Another topic which I like to describe is that performance of the duties related to the commission agent should be recognized at the time of performance. (I mentioned this topic about the risks of the market or some similar situations.

The time of the performance is other issue which is related to performance.

A commission agent should do his duty in the time which is mentioned in the agreement and if no agreement is made between he and the principal or there is a agreement but they do not mentioned the collapse of the time, the commission agent should do his duty in the time which is accepted by customs or it is logic in that situation.(12)

If there is a situation in which the performance is forbidden. By law or because of some commercial reason he cannot do his duty in the mentioned time, the commission agent should inform the principal.(13) Also the commission agent should do his duty with good faith and has the necessary qualification and skill otherwise he will be responsible against the principal. (14)

When the goods which a commission agents bought, are in his hand, should act carefully as a trust. This topic is mentioned in many cases in the British courts. (15). If the principal give some money to the commission agent just like other kind of agents , the commission agent should keep the mentioned money in a separate place in order to define the mentioned money away from his own. Money, but if he do not do this duty and at the result he cannot prove that a money, some money is belong to the commission agent, the mentioned money will belong to the principal. (16)

B – The commission agent should not inter to deals which is against his duty

In this topic I want to discuss a topic which describe that a commission agent should not inter to the agreement which are against the agreement between him and the principal, I mean if the commission agent is an agent of another principle and his duty is similar and there is a risk that these opposite performance is dangerous for the first principal, the commission agent should not inter to such agreement, otherwise he is responsible against the principle.(17) pay attention that the commission agent himself should not buy the mentioned goods as a principle and fight with the principle as a commercial competitor.

3. False action of the commission agent

As we mentioned before in this article, in the previous chapters, the commission agent is responsible to sell, the goods (which in accordance to the agreement between him and the principle, or in the apparent authority which the commission agent ship is a custom between the principal and the agent) to the principle.

But what will happens if the commission agent sells them to a third party? In this situation it is obvious that the commission agent is responsible (18) for this action. Also the principle can ask to get the mentioned goods and if the goods cannot be received the commission agent who act this forbidden action will be responsible and should make the compensation.(19)

At the end I want to add to part of commission agent in the law of United kingdom of Britain that because in this kind of agency the name of the commission agent is not said, I mean the commission agent buy the mentioned good for himself and by his own name, this kind of agency is also known as undisclosed agent in common law as a whole and in the law of United Kingdom specific.

4. Commission Agent in the law of Iran

About the law of Iran I should mentioned that law of Iran as a whole, and in the branches of law such as civil law, commercial law, and in out discussion, in the commercial law is affected by feghh, commission agent has along background in the law of Iran which will be discussed below:

4-1. Governing law

According to Article 357, code of commerce in Iran, a commission agent is a person who deals by his own name but the result of the mentioned act is for the principal, so he will get commission. And Article 358 of the mentioned code describe that, accept the cases which is described in the article below, the rules which are related to the lawyer ship will apply to the commission agent. But be care full that there are many differences between a lawyer and a commission agent.

Because a lawyer or in other kinds of agency, lawyer or agent ant by the name of the principals but a commission agent act by his own (as I mentioned above), so third party only knew the commission agent not the principal. I the commercial law of Iran, as it is described in Article 2(3) of the mentioned code act of a commission agent is a commercial act. Commerce code of Iran do not define any conditions for a commission agent. No special permission or certification is necessary for a commission agent like same other kinds of agencies act between to party; I mean principal and third part.

But in those kinds of agencies, an agent introduce them to each other and try to make the business art, but a commission agent himself act as a part of the commercial act. So a commission agent has two responsibilities, one of them is better the principal and other responsibilities is better third party.

4-2- Duties of the commission agent according to the law of Iran and the rules which govern commission agency, this agent has some responsibilities which are mentioned as below:

- Obey the guide lines of the principal.
- Make the mentioned deal by his own name.
- A commission agent should not be a party in the deal, (he can not have any special advantages in the commercial act but the commission which he is entitled to get.) only the rule of Article 373 of the code of commerce of Iran have some accepting.
- Inform the principal about his act or any the necessary information which the principal should be aware of theme
- A commission agent should has the permission form the principle and act as a trust.
- Maintenance of goods ass a trustee as it is mentioned in Article 360 of the code of commerce of Iran.
- Give the advantages of the dealing to the principle
- If a commission agent makes credit transactions he or she should accept the responsibilities of such a transaction.

4-3-Duties before Principal

Performance of the commercial act by commission agent and by his name has some results for example in this situation commission agent has some responsibilities before the third party who know him as a party of the contract. So principal has no any responsibilities before the third party.(20) For this reason whenever third party find out that a commission agent was not a party to the contract and he is a commission agent, third party against Article 196 of civil code of Iran cannot ask the principal to do the duties. I want to mentioned that Article 196 of the civil code describe that third party can ask the hidden party to the contract to do his duties. But commission agent has some special rules as we know.

Because of the situation in which the contract is made between the third party and the commission agent, the principal has no responsibilities before the

third party.(21) Another matter is that we cannot assume that a commission agent is visual principal.(22) Even commission agents of stock market are not virtual and themselves are responsible before the third parties. According to the mentioned reasons there are some fundamental differences between a commission agent and a lawyer. Because as we all know a lawyer has no responsibility to perform the contractual responsibilities. Besides a lawyer cannot ask to perform a contractual responsibility by himself. Article 530 of the commercial code of Iran also describe that the goods which are bought for a bankrupted businessman and are still available, if the price is not give to the seller, the seller can ask to take them back and if the price is not give to the seller the person who the commercial act is done for his name can ask to take them back. It is a reason which we can use to make our opinion describing that the commercial act related to the principal but the commission agent or undisclosed agent as the British law named it which the commercial act is done for his name will be responsible before the third party and the hidden principal has no responsibilities in this regard. As the mentioned Article described the mentioned goods belongs to principal.(23)

As we know in Roman-German law and as the law of France which described commission agency as uncompleted agency, the commission agent has the responsibility to give the mentioned goods to the principal but in commercial law of Iran (according to the Article 530 and also Article 357 of the code related to the commerce of Iran, In the law of Iran there is no delivery between a commission agent and a principal which is a weak point in commercial code of Iran.(24)

5. Conclusions

As we mentioned in this article a legal statement may be available in different legal system, but there are some differences in every legal system about the same statement, according its background and its fundamental rules every legal system make some special environments around a legal statement. Commission agent is available in both Iran and England legal system but there are some differences. By making a comparative study we become familiar with the mentioned differences and can use advantages of every legal system in order to have more uniform rules. For example English legal system has made good rules in international commission agency which can be used in other legal systems.

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