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CONFLICT OF EVIDENCES IN DISPUTE OF OWNERSHIP AND ENDOWMENT

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Abstract: *The principle in properties is freeness. Property endowment is an exception, and evidence is needed to prove being endowed. Evidences like deed of endowment, witnesses, science, quotes etc. can be included in the evidences of proving endowment. Among ownership instruments are: cultivation of dead lands, taking possession of properties belonging to no particular, contracts and commitments, exercise of preemption and legacy. Also presumption of possession is one of the most common ownership proving instruments. In relation to the role of presumption of possession and its importance at a property, it is enough to consider its squatter with ownership claim and the other one with endowment claim. Considering two mentioned claimants, this problem which is also denoted by civil law clause 35 can be discussed: possession as ownership is the evidence of ownership unless proven otherwise and in the other hand, the supreme court announced at the theory No. 699 date July 9, 1955 that possession as endowment is the evidence of endowment, and understood of civil law clause 35 and this votes theory contradictory from the branches of justice administrations and the different perceptions from this clause and theory, causes the outgoing sentences and despite of supreme court declaration at sentence No. 298 date July 7, 1944 that "in the subject of discussion between ownership and endowment, the principle is ownership and endowment claimant must prove the claim and the action of endowment alone will not be considered as endowment evidence", but unfortunately we observe numerous disputes in these two subject. In this paper, we seek problem solving at the discussion of ownership and endowment claim and solving the conflict of citation evidences of the two parties, to be able to illustrate the uncertainties and defects with presenting a perfect and general theory.*

Keywords*: conflict, evidences, possession, endowment, ownership*

INTRODUCTION

Ownership and Endowment definitions

There have been various definitions of ownership. The jurists and lawyers have presented some definitions of ownership. Deceased Dr. Katozian defines ownership as: "ownership is a permanent right whereby one can possess a property at law limits and can uses all of its benefits."

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Sheikh Toosi also defines ownership as: " و أن يتصرف فيه على وجه ليس لأحدٍ منعه منه، و هو القادر الواسع القدرة الذى له السياسة و التدبير، و يقال ملک بيّن الملک مضمومة الميم، و مالک المالک هو القادر على التصرف فى ماله، بيّن الملک و الملک بفتح الميم و كسرها يوصف العاجز بأنه مالک من جهة الحكم. و الملک"

In most cases, ownership's definition has been equal to domination. Domination also includes ownership but is not equivalence to it.

Domination has several differences than Ownership:

1. Domination is the origin of possession itself but ownership is the origin of lien.
2. Domination from power origin leads to possession but ownership is not associated with power.
3. Domination is not a special relationship and the domination of one person on one thing doesn't prevent others possession's possibility and domination; but ownership is a dedicated relationship.
4. Domination requires violent surrounding; but ownership requires insight surrounding. In other words, domination limit is power and strengths; but ownership limit is wisdom and insight.

Endowment: endowment literally means stand, settle down and tie up, and in juratory terminology consists tying up property and setting wealth ,in a way that possession into it is not allowed; so that possession is from ownership unless in the cases that has been excluded, and leaving its benefit and making it permissible and putting it in charity aims.

Sheikh Toosi has defined endowment at the book "Almabsoot" as: "فالوقف تحبيس الاصل و تسبيل المنفعه", endowment is holding possession principle and prefusing the benefit"

Importance of the Subject

The presumption of possession is one of the most common instruments in proving possession. In most cases, supporting possession is supporting ownership, because possession is the appearance of a legal status that in most cases coincides with reality. In most cases, possessor is the owner of property and as a result, supporting him is supporting ownership. For this reason, supporting of possession is necessary to supply security and social order. Because, as long as one has a right from a property apparently and in practice, his right is valid until it is proven otherwise. The ways to prove possession is the thing which is assigned for other rights. But about possession, it has also put possession law as evidence. Clause 35 of civil law knows possessor as property owner because it knows possession associated with his ownership and/or from its effects. Iran's civil law exempts property possession from proof of possession and his opponent who claims the possessor lacks the

possession, has to prove his claims; he is the person who has to prove that the possessor is usurper and hasn't it taken with legal means. It is clear from above that possession evidence is from presumptions in law and also presumptions in law is from presumption that law has assigned it as reason for an affair and judicial presumption governs on law presumption and it is superior. Judicial presumption is also consisting conditions that according to the judge is recognized as a reason for an affair; judicial presumptions are called current appearance and current appearance is also not from legal valid special suspicions but from thematic valid suspicions. So in conflict of possession presumption of law with judicial presumption, judicial presumption is prior to possession presumption of law and governs on it.

Statement of the Problem

Proving endowment or ownership requires reason. Civil law knows possession as ownership. If possessor is ownership claimant, he doesn't need another evidence for his ownership proving, and the endowment claimant must present an evidence for endowment. Conversely, it is possible that possessor doesn't also require evidence if he claims the endowment of his own property and the claimant has to present and demonstrate his ownership and non-endowment. According to clause 22 of registration law, the government only knows someone as ownership who has the property in his/her name. But sometimes it happens that before property registration with the name of the applicant and according to other personal laws, one claims ownership or endowment to the property. Also sometimes after property registration with the name of applicant and finishing registration operation, there appears conflict towards the ownership of the property. In this regard, various modes can be imagined in order to resolve the issue that we represent it in terms of two perspectives of juratory and legal with the subject of conflict resolution in the ownership and endowment contest. Also, we investigate that with regard to the importance of possession issue and its decisive role.

INVESTIGATION OF THE CONFLICT IN THE CLAIM EVIDENCES OF ENDOWMENT AND OWNERSHIP AT WRITTEN LAWS

Definition of evidences conflict

Sheikh Ansari knows the definition of conflict as:

"التعارض هو تنافی مدلولی الدلیلین علی وجه التناقض او التضاد", conflict consists: the incompatibility of the context and the concept of two evidences in the form of inconsistency or conflict. The definition of evidences conflicts in view of Dr. Jafari Langaroodi consists: the confluence of two thoughts in opposition to each other in a way that the sum of them is not possible. Summing the definitions, it can be said that the conflict of evidences consists: the confrontation and the conflict of citation

evidences of the two sides of contest while performing both evidences and their summation is not possible.

Various evidences of claim proving

Legal evidences (the confession, the document, the oath and legal presumption) and persuasive evidences (witness, expertness, location inspection, local research and judicial presumption)

The conditions of evidences conflict

A. the existence of at least two evidences, B. negating and denying each other, C. unity of issue, D. demonstrability power (legal) investigation of "law" evidence conflict in the claims of endowment and ownership:

A. Confession: The judgment would be in favor of each party of endowment or ownership claim who confesses to his detriment and to the other's gain. Therefore, in this case no conflict between confess and other evidences is observed. For example, if one of the two sides of the endowment and ownership claim presents some evidences including document, witness, expertness, local research or local inspection which the result will be in his/her favor, but with regard to his/her conscience and contrary to his previous citation evidences has confessed the reality; in this cases, the confession can't be known in conflict with previous citation evidences.

B. Document: It has to be said that according to the conflict of document with other evidences and its application in endowment and ownership claims, with regard to clause 1309 of civil law against official document or a document that its validity is confirmed at tribunal, the lawsuit which is contrary to its contents will not be proved by witness. So in the cases that one of the two parties of endowment and ownership lawsuit has an official document or a ordinary document which its originality is confirmed by tribunal, no conflict appears and the other side can't claim endowment or ownership with citing to witnesses. There is also no conflict possibility between two parties about the conflict of documents with expertness. For example, the claimant of ownership to prove his ownership for official document and the claimant of endowment to prove endowment claim has to refer to expertness or vice versa. There is the possibility to prove forging or the originality of endowment document or also ownership document by expertness. Also there is the possibility of taking place some mistakes in setting endowment or ownership document from the aspects of limitations and/or other attributes and can be understood by expertness. Also in the conflict of documents with law presumptions, the documents have to govern on law presumption. For example in the contest of endowment and ownership demanders, by presenting official document of endowment claimant and with citation to possession which is from law presumptions, the endowment claimant invalidates the possessor claim.

There are three cases in relation to the conflict of official documents with each other: A. the conflict of official document with official document, B. the conflict of official document with ordinary document, C. the conflict of ordinary document with ordinary document.

The application of above mentioned cases at the lawsuit of endowment and ownership is in the way that both parts of property and endowment have official document about the claimed property which in this case according to legal and registered rules, one of the two documents must be invalidated. In relation to the conflict of official document with ordinary document in endowment and ownership lawsuit, the conflict between them is not visualized. For example, endowment claimant has ordinary document and ownership claimant has official document and vice versa. In this case with regard to demonstrability power of official document, the judgment would be in favor of its owner; whether he/she is the endowment claimant or ownership claimant. In conflict with ordinary documents, the sentence will abort both ordinary documents because presenting the sentence in favor of one of them is opting without priority. It is worth noting that while the official documents can't be considered directly as without authority and proving the lawsuit which is contrary to its contents with witnesses, but it is possible to invalidate it by presenting evidences to tribunals and proving that the document has not been set legally and its setting items is not according to registered regulations, and establish ownership or endowment face for it according to registered and civil laws.

C. law presumptions: In the discussion of the conflict between law presumptions and witness in endowment and ownership claim, endowment claimant with citation to the witnesses of endowment and ownership claimant through possession law presumption has ownership claim or vice versa. In this assumption with regard to the reason that witnesses are specific than law presumption and its governance on presumptions, witnesses must be considered with priority whether witness is in favor of endowment claimant or ownership claimant. In other hand, the witnesses are personal and specific, and law presumptions are general and typical, and in the contrast of general and specific, specific governs on general. Also witnesses have direct implication on fact while presumption is based on suspicion and appearance, and have indirect implication in proving the contest issue. So in the conflict of direct and indirect evidence, the direct evidence should precede. In the assumption of the conflict of two law presumptions such as two parts of endowment and ownership lawsuit which both rely on their possessions, we must take the fall.

D. Oath: Oath is divided to three types: Betti (lawsuit decisive), supplementary and complementary. Clause 1325 of civil law declares that: In the lawsuits that are provable with witness, the claimant can subject the sentence of his/her lawsuit that the claimant denies to the oath. In other hand, endowment and ownership

lawsuit is also provable with witness. To determine provable affairs with oath, three conditions are required: first, its affair is from people rights; second, there are no other valid evidences; and third, its theme is provable with witness. In relation to the discussion of oath applying at ownership and endowment lawsuit, it is worth noting that if no parties of the endowment and the ownership have the evidences such as document, confession and witness, they can use the right of oath and prove their lawsuit i.e. endowment and ownership. In the case of bringing lawsuit decisive (Betti) oath, there is no possibility of its conflict with other evidences because as have been mentioned, from the conditions of bringing oath is lack of other evidences that with lack of that evidences we refer to Betti Oath. But if one of the parties of endowment or ownership confessed to the other one's right after lawsuit decisive oath, for example after presenting oath that the other part has no right, he/she returns from his/her oath and confesses the fact (for instance retaking endowment or ownership lawsuit), then it will be operated according to his/her confess and the oath is not valid any more. About supplementary oath, it is worth noting that this kind of oath has just the ability to prove financial affairs. If one of the endowment or ownership lawsuit parties has two witnesses and the other one has one male witness in addition to claimant oath, the ability of the party who has two witnesses is more than the other. For example endowment claimant has two male witnesses and the other who claims the ownership, has one male witness in addition to ownership claimant oath, in this case according to laws, the sentence would be in favor of endowment claimant or vice versa. Of course, it is worth mentioning that due to the weakness of oath at proving the right, if one of the endowment and ownership parties has stronger evidences than the other, primarily his/her evidences will be considered and resorting to oath will be prevented. For example one of the parties (supposedly) of the ownership claimant has official document and the other one (supposedly) of endowment claimant rely on the witness of a man in addition to his/her oath, the judgment would be in favor of ownership claimant.

Also in the case of complementary oath, it can be said that if supposedly in the endowment or ownership lawsuit which one of the parties claims the other one is dead and has endowed the claimed property, the claimant has to oath in addition to witnesses. Or if supposedly, the claimant has ownership claim and claims that the other claimant has found the reason of selling endowment (for example converting to the best, or the fear of bloodshed) and then has bought it from decedent, he/she has to give complementary oath in addition to witnesses. Also it is worth noting that the exportation of complementary oath writ is itself indication of two issues: one indicates that the judge has accepted the main evidences in proving the right and merely wants complementary oath from claimant in the sentence of the law to persuasion in holding the right. The latter is that it will be clear that there has not been presented any valid evidence on un-holding the right from the heirs of the deceased. If after giving complementary oath by claimant, no

evidences is presented by heirs on un-holding the right, conflict fulfills between them and it has to be operated based on new valid evidences.

The legal investigation of persuasive evidences conflict at the endowment and ownership lawsuit: Persuasive evidences are the reasons that despite defining their demonstrative power and reckon in law, but contrary to (law evidences) the influence of them at satisfying the judge (demonstrative value in specific meaning) and also the possibility or non-possibility of proving otherwise by other evidences, is not determined by legislator. Therefore for the persuasive evidences, it is not possible to conclusively determine that in the conflict between two persuasive evidences always one of the evidences precedes, because determining their demonstrative value rate in each specific case locates within the evaluation area of the judge. From another perspective, persuasive evidence is the evidence that judge has carte blanche in accepting its content and is effective in proving the claim only if the judge is satisfied by its content and has believed its context. Witnesses, expertness, location inspection, local research and judicial presumption are among persuasive evidences.

A. **Witness:** Types of witness: direct, indirect and quotes (Shya or rumor)

It has been discussed about the conflict of witness with confession that there is no possibility for conflict and even assuming the impossible, confess precedes witness. The conflict of Betti oath with witness is not possible. In the conflict of witness and documents, the documents have to be considered beyond witness. Also in the conflict of witness and law presumption, witness has to precede law presumption according to clause 1323 of civil law. About the confliction of witness with other persuasive evidences since witness is evidence with special meaning and in other hand its priority at the mentioned order in civil trial regulation law and civil law, it has to be known as headmost to other persuasive evidences. However, since according clause 241 of civil trial regulation law, recognition of value and witness effect during conflict with other evidences is with court, it can be possible that at exceptional cases, the court will prefer other persuasive evidences upon witness. In the discussion of endowment and ownership lawsuit, whenever one of the parts claims endowment or ownership with citation to witness, his evidence has superiority on other persuasive evidences and proves the claim. Only in one case, there is the possibility of the conflict of witness with expertness and it is the case in which the expert at endowment and ownership lawsuit verifies the claim of forgery or non-compliance with registration regulation and the rule of document registration, and undermines the document of one claimant of endowment or ownership that in this case the conflict between expertness and witness occurs and the investigation must continue based on other evidences.

In the conflict of witness with witness, it has to be expressed that, as mentioned before, witness has three types. In the conflict of direct with indirect witness, the

direct witness must be considered superior. So if one of the parties in endowment or ownership lawsuit has direct witness, his claim is superior to the party who has indirect witness. Also in the conflict of witness and oath with direct witness and indirect witness (witness on witness), it must be considered inferior. Because it has lower demonstration value; so if one of the parties in endowment or ownership lawsuit has witness in addition to oath, and the other has direct or indirect witness, sentence is in favor of direct or indirect witness. Also in conflict between witness on witness and witness in addition to oath, witness on witness (indirect) must be considered superior. Because witness on witness has demonstrative power of all people's right lawsuit, and witness in addition to oath has demonstrative power only at financial lawsuits. In the conflict of two witnesses of direct with indirect, indirect with indirect and witness in addition to oath with witness in addition to witness, the eligibility and predominancy must be considered and one item should be preferred.

Expertness: In the conflict of expertness with other evidences, it can be said that there is no conflict between the oath and confession. Also because of lacking subject unity between expertness and documents, the conflict doesn't occur between them. Which one is superior in relation with evidences conflict between expertness and other persuasive evidences including location inspection, local research and/or with judicial presumption? The answer has to be that because proving special affairs forms via expertness, and judicial presumption, location inspection and local research lack special aspect, so in these cases it has not demonstrative power. So expertness doesn't locate in conflict of direct with the mentioned evidences. As a key point, it can be expressed that a thought contrary to expertness thought can't be proved with other evidences due to its special aspect (except witness only in the cases that the expertness issue is directly understandable with the senses). So it is possible to put in question the bases and instruments of expert theory with other persuasive evidences and it is possible to indirectly affect judge conscience to reach the intended result through clause 265 of civil trial regulation law. For example in the lawsuit of endowment and ownership, if ownership claimant with citation to expertness thought and observing property situation estimate the lifetime of the trees in the garden 80 years and the issued document of endowment claimant is announced 50 years ago (the age of trees is more than the issued document), the bases of endowment claimant document can be agitated by citation to expert theory. Or in the mentioned example, endowment claimant wants to reject expertness theory with citation to witness, Because the expert theory is special and is not able to conflict with witness. In this example, endowment claimant can prove non-accordance of expert thought with researcher states at legal time duration; for example he/she demonstrates that the trees lifetime is about 40 years. The conflict of two expertness is not also discussable based on clause 258 of civil trial regulation law and is visualized that there is a citation to a

theory of an expertness group in relation with that subject in other dossier that our current law has not illustrated it.

Location inspection: Observation and registration of objects current situation which comes to action by one of court magistrates or research judge is called location inspection. Location inspection nature has to be known in some cases as the evidence with special meaning, and in some cases as presumption. Where location inspection is performed for direct observation of lawsuit issue and the judge with his/her eye or other senses understands the subject directly, there is no need of inference and reasoning, and knowledge and certainty comes from its results; so it has to be known as evidence with special meaning. But where location inspection is performed for the consideration of indications and situations and states, since indications doesn't indicate directly on lawsuit subject and it is possible to achieve suspicion merely via the judge inference, therefore location inspection in these cases have judicial presumption nature. In the conflict of location inspection with judicial presumption, location inspection including presumption type or evidence on law presumption is superior. Also there is no conflict between oath and location inspection. There is also no conflict between documents and location inspection. Hence one of the parties at endowment and ownership lawsuit with citation to official or ordinary document (that its originality has been proved) and the other with citation to location research want to legitimize their possessions which in this assumption, location inspection is inferior to document. But if it appears that at location inspection in the documents of one person at endowment and ownership lawsuit, there is a failure in limitations and/or other attributes at document, it can be considered. Also the conflict between expertness and location inspection is not possible due to the special state of expertness. The conflict of two location inspections is also very rare.

Local research: Receiving location residents information (including quarter, market, workshop etc.) about discrepant subject affairs is called location research. The residents information is known in Islam synonymous with quotes, Shya, rumor. First witness knows the provable affairs via quotes restricted in seven cases of ancestry, death, absolute property, endowment, marriage, freeing slave and judge superiority. The conflict between ordinary and official document is not possible with local research. For example when endowment claimant with citation to local research has the claim of endowment and ownership claimant with citation to ordinary document (which its originality is not proven) or official document has the claim of ownership, endowment claimant is defeated by ordinary or official document. In the conflict of local research with location inspection in the type of evidence with specific meaning, location inspection has to be superior over local research which is among judicial presumptions because it is evidence. Because, how does the believe of residents that didn't see the lawsuit subject can be preferred to judge or magistrate direct observation. Undoubtedly the judge prefers what

himself or other judges has seen and understood to people believe. So if endowment claimant with citation to local research claims the property endowment and ownership claimant with citation to location inspection and seeing old trees and the effects of garden long life claim ownership, local research is defeated by location inspection. In the conflict of local research with location inspection in type of judicial presumption, the judge has to prefer one of them arguably based on situations, states, severity and weakness of mentioned indications. In the conflict of local research with judicial presumption, the judge has to prefer one of them with regard to situations and states and indications and if their influence on the judge persuasion is completely equal, with regard to above mentioned arguments, sentence issuance based on local research is preferred. In the conflict between two local researches, there are three states: first, local research performed in a dossier is cited in other dossier. Which in this case, the judge or the magistrate of the new dossier must perform local research again and if their results are the same or not, the judge will consider the research which is performed under his/her attention. Second, in a single dossier and in addition an agenda, it is possible that the results and information from local research are in conflict with each other that according the clause 249 of civil procedure law, the opposite site can take present his/her witnesses; then both sides expressions is reflected and if the mentioned information results are in conflict to each other such that achieving judicial presumption is not possible from it, the mentioned conflicting information lack authority and the investigation must continue based on other evidences. Third, sometimes in a dossier there might be two local researches, from different or single locations that in this case due to persuasive state, both evidences of their demonstrative value is with judge. For example, when in endowment and ownership lawsuit, the result of a research is in favor of endowment claimant and other results are in favor of ownership claimant, the judge has to give two votes in favor of one part based on evaluating its value and if it is impossible vote to divide and investigate based on other evidences.

Judicial presumption: In jurisprudence, judicial presumption is called with different names including presumption, obvious indications, state indications and …. . Judicial presumption consists: the presumptions which are given to judge thought and consists the situations and states about the case; and is reliable whereas the lawsuit is provable with witness and/or complements other evidences and in other definition: judicial presumption consists the indications and situations and states that in each specific case indicates the judge view, such that from its results the strong and reasonable suspicion on the existence of unknown will be found, such that the judge reaches to an amount of conscience that is probably reached to the fact. In the conflict of judicial presumption with documents, it has to be considered as defeated by documents. In the conflict of judicial presumption with location inspection, the law has given the evaluation to the judge will. Also if the location inspection is from evidence type, its superiority to judicial presumption

is clear because of the judge direct observation. In the conflict of ordinary judicial presumption with ordinary judicial presumption, most of lawyers prefer evidences and if possible comment to divide. Finally, I mention that the rate of issues influence on judge mind has levels of weakness and strength and the more this influence tends towards real certainty and knowledge, the more is its validity. So, each one of endowment or ownership lawsuit parties who have document against judicial presumption, the law knows him/her the ownership or endowment claimant according to case. Also if each one of the parties has evidences that according to above cases are in conflict to each other, according to the case it will be given to each one of endowment or ownership lawsuit.

Juratory investigation of evidences conflict at endowment claim

In relation to setting documents and its registration, it can be said that at ancient times it wasn't like today. Endowment history in Iran returns to before Islam, such that property endowment was granted to the temples. Seleucids and Parthians also respected to this method.

Iran in 651 was seized by Islam army and according to a story, its lands which was called "Maphtoh al-onve", was considered as endowment lands. In the first Islamic centuries, the endowment had its ordinary trend until in the second half of forth century, the endowment court was established. This court has similar role to today ministry at official organization. Controlling and complying endowment contents about the way of exploiting and endowment application was among mentioned court duties. If endowment trustee had default in this context, the mentioned court would take the endowment back from him/her and demand the damage compensation. With regard to above subjects, it can be concluded that the most of endowments which we are facing today have a defect with the title of endowment lack and only the document which has been cited, is endowment evidence and is known as endowment, and this problem is one reason of the dossiers compression related to endowment in the courts that with resolve and remedy about this we can observe contention solvation, decrease of procedure prolongation, establishing single trend in the courts about endowment, preventing from profiteers abuses in taking endowment properties or abuse from the title of endowment at possessing private lands, making endowment general bank and removal of undecided properties and lands related to this issue. With regard to endowment juratory root, in this paper we seek to ameliorate about evidences confliction in endowment and ownership lawsuit from juratory viewpoint.

Occupation as possession is the reason of possession unless proven otherwise. Occupation as endowment is also the reason of endowment unless proven otherwise. But the point is that when there is a conflict in occupation. I.e. there is discrepancy about property that is the occupied property (certain property) in person's ownership or the occupation is the sign of endowment? One case is

occupation as ownership and the other, occupation as endowment. This is the time when dispute increases and the conflict must be resolved according juratory regulations. There is discrepancy that is occupation as endowment the reason to endowment like occupation as ownership is the reason of ownership. First, presumption is not valid endowment so the possessor as endowment has to prove endowment evidence. Therefore the only supposition which is visualized is the conflict between the current possession and previous endowment that it has to be proved that endowment property has obtained transition and salability. If the history and situation of the property is not clear, it can be said that with citation to possession regulation, the sentence is given to ownership, but if a property was endowment before and now two persons claim it, with regard to contradiction with principle, the transition of endowment property must be sentenced to endowment unless there is a strong reason on its transition legally and this is not from retention on possession governance. According to regulation in such state (conflict in occupation), the vote is to ownership and the property endowment needs to be proved. Because each endowment property in its initial state has been a private property after which the owner has made the property as endowment. So as long as endowment realization is not evident, the vote is to non-endowment. We require three pillars to realize endowment.

1. offer, 2. acceptance 3. receipt. So we conclude that in confliction between ownership and endowment towards a certain property, ownership is superior.

In Iran's civil law view, ownership possession is ownership presumption if it has not any litigious or if has, it has not been proved otherwise; otherwise if the claimant proves using evidences that the possessor occupation is usurpingly, possession value would be aborted. Civil law knows the possession presumption limit up to proving its opposition. However, the content of rule possession is not an applicable principle in jurisprudence principles knowledge, but it is presumption and so is always superior to retaining; but if evidences rise to challenge with it, will be defeated undoubtedly. Iran's civil law assigns in clause 36: "The occupation which has been proved is not from legal conveyer or owner, is not valid". Under this clause at dispute position, the possessor person doesn't require to prove his/her ownership origin, but if the claimant proves with adequate evidences in court that the occupation of possessor has not been from legal conveyer or owner, possession validity will be aborted.

The object has three types:

1. The object which has the ability to redeployment; so in the realization of transferor cause like sale, donation and inheritance there is doubts towards the thing which is under his/her domination.
2. In this case, there are doubts that the mentioned object is free or not.

3. We have certainty and knowledge that object is not free and has not redeployment capability unless with specific license like endowment object that has not buying and selling ability, unless if it is destroyed or there is a fear to cause devastation or it results in the occurrence of intense discrepancy among endowment possessors (as is famous).

In the first kind, there is no discrepancy among the jurists at possession authority and sure person is from this kind. In second kind, possession is also agument possession, due to including evidences predications, wises base and consensuses on it but in most cases, possession is from this kind; because if we don't consider the possession as valid in this case, it causes chaos and disorder in the system and as Imam Sadegh said: for Muslim doesn't remain any manifest while no discrepancy has been observed in this kind. So in the third kind that we know the property has been endowment before and is not free, there is discrepancy among contemporary jurists. Some of the jurists know possession valid and the ruler and some other not. In short, the subjects that the jurists have expressed include: decedent Naraghi in a document of this context said: as possession necessity is ownership originality at the properties that have ownership ability, also at the properties that have not ownership ability like endowment property, possession necessity is to grant endowment object to possessor; so if the object is at someone's possession that claims its endowment and another person claims mentioned property without any evidences, the possessor word is prior. Because of Yones Ebn Yaghoob validity and also suspicion consensus, as have been said in decedent Naraghi's view sometimes occupation is ownership presumption and it is in the properties that have ownership ability and occupation is sometimes allocation presumption. This is in the properties that have not ownership ability like endowment. One of the cases that possession is clear from beginning, is the case which has financial possessor in his/her authorization which is not essentially with redeployment ability, unless due to a legal license like endowment properties; the problem is that possessor currently has ownership occupation in a property that we are sure was endowment before and might be conveyed to him/her with legal license. In this case, this question rises that is possession an ownership presumption at mentioned supposition? As have been said before, there is a discrepancy among the jurists. Some of contemporary jurists have said in this context that knowing the property has been endowment before possessor domination is similar to knowing the property is the property of others before domination; so it hasn't any effect against possession, Because there is nothing among them unless endowment retaining and this retaining is also similar to property retaining on other's property which the possession is the convict. Of course if the knowledge exists that possession on endowment property has been occurred, i.e. it is proved that possession was as endowment at beginning and afterwards they suppose that with one of endowment selling licenses, it has been given to the possessor, in this case current retaining governs on possession but if

the mentioned knowledge doesn't exist and there is the possibility that possessor has occurred after endowment invalidity, possession is prior in this case. Decedent Seyed Kazem Yazdi's view is that in this context, elaboration has been attached. Some other of contemporary jurists know this view wrong and knows the stronger promise as possession invalidity and property abstraction incumbency from his/her possession and yielding to endowment master; unless the current ownership is proved. The reason for the mentioned idea is that possession is ownership presumption if the nature of occupied property has the current ability to convey and is not entailed and just the possibility of presenting one of endowment selling licenses is not enough; in the other words, possession on synopsis method, is a presumption that the property from first ownership because of one conveying instruments has been transmitted to possessor without determining the mentioned cause. This issue comes after ease of transfer capability of the property, and in endowment this is not the case; because transfer at endowment properties is made after one of its selling licenses appeared. So in endowment first one of selling licenses has to be established, then must transfer to another and the possession presumption is observer only for the second issue and it is the transfer to possessor. But doesn't include the first direction and must be proved otherwise; the first direction is the subject for second direction so the retaining of un-presenting selling license is suitable for possession fall. So according to its matching referent meets possession subject (like current possessor retaining); if it has been said that presumption possession indicates property transfer to possessor, its necessity is that one of endowment selling licenses as the introduction of property transfer is realized before and presumption dignity is to prove parts and accessories. So the possession as proves transfer, in a same way proves one of transfer licenses. So in rejecting this objection it has been said that the ability of property to transfer is as subject for transfer not from parts and accessories. For example if there is doubt about the thing in possessor's hand, it is vinegar or wine with the previous knowledge that we know it was wine, upon possession and the claim that possession is ownership presumption and also wine has not ability to ownership, the suspicious object is vinegar because presumption proves accessories. It is not possible to prove it is vinegar because this problem is from financial direction not from ownership accessories and doubt is at subject itself. Possession can't prove the subject so the possession is not a presumption on the mutation of wine to vinegar, but retaining being wine governs on possession. In above problem, the possession in a property which has been endowment before is similar to the occupation of the thing which has been wine before. So as possession is not a presumption on converting wine to vinegar, also about endowment, possession is not a presumption on converting wine to vinegar, also about endowment, possession is not a presumption on realizing one of endowment selling licenses.

Some other contemporary jurists in confirming the view of decedent Naeini have argued that possession evidences doesn't include endowment because the

main reason of possession presumption includes wises methods and their continuous method, and the news and consensuses that indicate signing the mentioned method from holy legislator. Because wises of following custom, in confrontation with such a case avoid from its transaction on an endowment that persons dominate on it as ownership as soon as possible the existence of one of endowment selling licenses and after research, investigation and getting certainty from the existence of endowment selling proceed for its transaction and predications incurred in religious in addition to that they are observing wises method, per se is apart from endowment case and there is at minimum some doubts and this is enough that corruption principle is spread. Moreover, it has been said before that possession indication on one object's ownership is according to necessity and is the initial nature and current appearance of possession and our problem supposition is that this necessity and the initial nature about endowment object and its similarity has been converted. Because endowment nature necessitates that object has to be at detention state, and is not salable nor inheritance, so its transferring license is one issue that complaints from it and this is restricted to some certain and limited faces. In the other words, endowment selling license realizes only in necessary and emergency state. It is evident that the demonstration of adventitious issue needs a special reason and possession and occupation is not enough for its demonstration. In the view of this jurist, this decree is in a place that there is certainty of occupation endowment history but in a case which there exist a doubt, possession has evidence, because external grandee due to their initial nature has transfer ability and their entailment and endowment is an adventitious issue that needs to be proved. So this adventitious issue if has happened in its place is considered among endowment grandees. So un-transferring of it is as secondary nature for it and will not be out of initial nature unless with reason.

Decedent Mohaghegh Esfehani said in his booklet on possession rule after general will of possession evidence: authority criterion which consists overcoming possession against others, is preserved in this position and overcoming endowment grandees retaining because of rarity of its selling license existence is with itself, so this is in possession case that has been proved on endowment frequently and now there is doubt on endowment retaining in its state or converting it to an ownership possession; but in the case of our discussion, the supposition is that previous possession on endowment is interrupted and another event has been occurred that there is a doubt, is possession from ownership or is from endowment; so no opportunity exists for imagination of possession retaining on endowment. Because the predominance of ownership possession existence includes it and no reason exists for deviating from it. He said to complement his evidence that if possession is considered as religious principles, the principle of correctness at selling located among endowment trustee and possessor is spread. But it has been said in reply to the mentioned reasoning that first, as have been said possession evidence criterion, is not overcoming ownership possession but the criterion is the possession current

appearance i.e. initial nature necessity and similar to it in this problem is the evidence of reality originality that its evidence is not from predominance of reality on virtual; but it is evidence though the punishment is the most. Second, this predominance has been converted in endowment grandees. So the dominant in common possession on it is lack of ownership both from occurring and from retaining and the difference among previous possession and occurred possession is meaningless because its summation spreads on endowment object and whenever there is doubt at transfer ability of dealing property, correctness rule spreads. So the transaction of trustee and possessor is invalid. One other jurists said in opposition to decedent Esfehani: if there is endowment in property history, two states exists: sometimes there is knowledge to possession existence, and possession has occurred on the property which is under endowing, and it is possible that some of endowment selling licenses and buying from its trustee has been realized and sometimes we are not aware of its history and there is the possibility of possession occurrence after selling license. Anyway, possession becomes invalid weather have visited the governor or not, because possession evidences is apart from its parable and the other wises method is on non-succession of ownership effects on its anecdotes and perhaps the reason is that the possession validity is because of predominance and type, and the realization of endowment selling license is rare. If removal of issue with governor is taken, there are two states: or contrary to him is endowment master or another. With regard to the first that his confrontation was endowment master, here the possessor is the claimant and the property will be taken. Because possession validity is hanging on obtaining property ability for transfer or is hanging on lack of obtaining non-ability. So due to the first, possession becomes invalid and due to the second, retaining endowment precedes on possession due to obtaining lack of capability, and anyway, possessor claims and endowment master is located in disclaimer position. But due to the second state which endowment master is not in contrary to possessor and each one of possessor and claimant have ownership claim, it is not unlikely that this claim is similar to the claim in a property which no possession doesn't exist for it because invalid possession is not possession at all. And this view is logically more justified. The last point that has to be recalled in this context is that if someone asks what is the difference between endowment and the lands obtained by war, that if the mentioned lands are in possessor's hand and he is their ownership claimant, his possession on them is stable and retaining them is not spread on history state?

Their difference is that the lands occupied in war are Muslims land and have current transfer capability and similar to endowment properties are not entailed and has not non-possession state, but their transfer is in governor's hand and due to typical interest, and the governor can sell it or retain it in Muslims land; and can take tax from the people who has it. But it is clear from some news that these kinds of lands are like endowment properties in entailment and without legal license

hasn't transfer ability. Decedent Saheb Javaher believes that the mentioned lands have not transferring capability and their heritance license is not correct. Also making buildings and other occupations is invalid on it. But Shahidein at Sharhe Lame believe in opposition to this view that these kinds of lands following their consequences like building and trees can be selected for sale.

CONCLUSION

One of possession rule exceptions is the discussion of occupied property endowment; in a way that one has ownership claim on a property and one other the endowment claim, one as owner and the other as endowment. Here so-called the conflict of two possessions occurs. The base of both claims is possession. One is occupation as ownership and the other occupation as endowment. This is the time when the contest arises and it has to be solved according to law and judicial regulation. In the discussion of endowment and ownership claim in this paper we follow a method that investigates this problem from the aspects of judicial, law and registration:

First we investigated the problem of evidences in endowment and ownership conflict from law aspect and we found these results:

In law discussion at first we divide the evidences into two categories of legal and persuasive and based on this division we solve the problem of conflict in endowment and ownership claim. The legal evidences include: confess, citation, law presumption and oath. Persuasive evidences include: witness, expertness, location inspection, local research and judicial presumption. First with regard to the order of lawsuit demonstration evidences in written rights and civil law, we investigate law evidences. Second, if the subject was out of including law evidences we refer to persuasive evidences and based on it we issue sentence theory. Third, we have to search that is any conflict designable in the lawsuit of endowment and ownership lawsuit or not, and this problem with considering 4 conditions a. existence of at least two evidences, b. rejecting each other, c. subject unity, d. proof, per se each of the evidences in lawsuit subject (proving power) can be realized. I.e. if in the lawsuit of endowment and ownership due to the order of above evidences, each one of lawsuit parties attached to the citation of demonstrative power (ordinal), for the other part will not remain a solution unless condemnation. For example if endowment claimant with his/her confession acts in favor of ownership claimant certainly endowment claimant will be condemned to having no right. This example applies in relation with other ordinal evidences (law; persuasive). The only supposition that remains is the conflict of evidences from the aspect of having above four conditions. For example both parties have official document or the parties having witnesses are equal in justice or majority; in this case we have to refer to evidence priority or take dividing.

In judicial aspect we reached to these results:

In relation with evidences conflict at endowment and ownership lawsuit we have to express in short that in the conflict of possession with retaining, we reach to the result that retaining governs on possession if there is a question why presumptions are prior to principles, we answer that the current possession is in doubt but retaining removes our doubt and ignorance to possession subject. Of course, in the views of most jurists, possession is prior to retaining. But from the expressions of some wises it can be concluded that in the case of association, retaining is prior to possession rule. But this judgment is true only when the possessor confesses to overtaking, possession, claimant or his/her ownership history which in this case he will be considered himself as claimant and valid evidences will be asked from him. In the conflict of possession with valid evidences, in most cases valid evidences govern on possession because the higher strength of valid evidences on possession is certain unless in rare cases. In the case of the conflict between possession with confession we conclude that confession governs on possession unless in the case that the current owner confesses that the property was his property before, which in this case lawsuit mutation is occurred and the claimant position and denier is changed and the denier has to illustrate the transfer way. In the conflict of possession with quotes we conclude that quotes and rumors are one of the ways of endowment and ownership demonstration. But sometimes quotes are in conflict with possession. One person claims endowment with citation to quotes and another with citation to possession rule claims ownership, or vice versa. With regard to all subjects in relation with possession and quotes rule, it characterizes that possession governs on quotes; unless quotes are having knowledge. In relation with endowment and occupation presumption, it is hard to say that when a property was endowment previously and is not lawful, is the current possession as proper ownership correct or not?

There are many discrepancies in this case. Some with regard to previous knowledge has donated as endowment, retains it as previous state and announces it as endowment, or seeks its sale license. So in this case retaining governs on possessor. But if there is doubt in endowment in the past, possession governs on endowment. Because external grandees due to their initial nature have transfer capability, and entailment and endowment are adventitious issues that require to be proved. In Iran's judicial procedure a question is posed, that is occupation as endowment the evidence of endowment similar to occupation as ownership which is the evidence of ownership? Which many discrepancies exist in this case. Some know previous ownership prior to current occupation and the result is that "no endowment unless in property" i.e. ownership is original. In opposition some of magistrates know occupation as endowment the evidence of endowment. Anyway ownership is original unless the previous endowment is proved in a way with knowledge which in this case the current ownership possession rejects from valid

evidence or current owner has to prove that the property has been transferred to him/her via a legal transferor.

So the principle in properties is freeness. And the endowment of a property needs evidence. If a property was endowment before and now is under someone's domination which uses from it as ownership, if its endowment is certain and there is knowledge about it, endowment is superior unless the possessor prove his/her ownership occupations with legal conveyor. In the question that is possible to prove endowment via rumors, quotes and the similar issues or not, it can be said that with regard to the rule of (no endowment unless at property) the validity of possession presumption and the trust to it is more than quotes and similar issues. In the other hand, with citation to valid and famous rules like: possession rule, respect rule, domination etc. it is possible to well understand its superiority on the issues like quotes or rumor etc. which are themselves lower degrees of witness.

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