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Duality of Ownership: An Analysis of the Conflict Between Jurisprudential Foundations and Official Registration Requirements in Immovable Property Transfer

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ABSTRACT

One of the fundamental challenges of the Iranian legal system in the field of registration and ownership of immovable property is the conflict between two jurisprudential and legal approaches to ownership transfer by sale. The jurisprudential approach considers the realization of ownership to be based on offer, acceptance, and the consent of the contracting parties, while the legal approach emphasizes mandatory official registration of immovable property transactions. This study shows that this conflict persists and, in dealing with official and ordinary documents, has led to disagreement among legal scholars and in judicial practice concerning recognition of ownership. It explains and analyzes the relationship between the foundations of Imami jurisprudence and mandatory official registration in the transfer of immovable property. Moreover, approval of the Law on Mandatory Official Registration of Immovable Property Transactions by the Expediency Discernment Council, despite inconsistency with the prevailing jurisprudential view, has not resolved the conflict between the offer-and-acceptance jurisprudential system and the registration-based legal system. The findings indicate that the solution to this conflict is distinguishing between validity of the transaction at the stage of substantive validity and its enforceability at the stage of proof; that is, jurisprudentially, sale is valid through offer, acceptance, and consent of the contracting parties; legally, official registration is mandatory for enforceability before judicial authorities and for preserving public order and transaction security. This approach, while preserving Imami jurisprudence foundations, satisfies modern legal system requirements and prevents practical conflicts.

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Introduction

One of the fundamental and enduring issues in the Iranian legal system concerning the registration and ownership of immovable property is the conflict between two approaches—jurisprudential and legal—regarding the transfer of ownership arising from a sale contract. In Imami jurisprudence, ownership is realized through offer (ijab), acceptance (qabul), and the consent of the contracting parties; official registration is not a condition for the validity of the transaction. In contrast, the modern legal approach, emphasizing mandatory official registration, considers an unregistered transaction as lacking full legal effects at the stage of proof and enforceability.

This conflict is rooted in two distinct epistemic systems: the jurisprudential system grounded in offer, acceptance, and consent, and the registration-based legal system aimed at maintaining public order, transactional security, and preventing legal disputes. The approval of the Law on Mandatory Official Registration of Immovable Property Transactions by the Expediency Discernment Council, despite its inconsistency with the prevailing jurisprudential view, has failed to fully resolve this conflict. Disagreement among legal scholars and inconsistencies in judicial practice—particularly regarding official versus ordinary documents—persist. The aim of this research is to analyze the relationship between the foundations of Imami jurisprudence and the mandatory registration requirement, and to propose a solution for resolving this conflict.

Methodology

The research method is descriptive-analytical with a jurisprudential-legal approach. Primary data were collected through library research, including Imami jurisprudential texts, current laws and regulations, unified judicial precedents, and judicial practice. Key concepts and rules were extracted and analyzed, and the jurisprudential foundations of ownership transfer and the legal requirements of official registration were examined separately. The most significant part of the research is the presentation of a practical solution through the distinction between the stage of substantive validity (thubut) and the stage of proof and enforceability (ithbat).

Literature Review

Numerous studies have addressed the conflict between jurisprudential foundations and official registration requirements in immovable property transactions; however, they have generally examined either the jurisprudential or the legal aspect separately, with less attention given to a combined examination of the two systems. Some studies have merely examined the validity of ordinary and official documents in courts, while others have analyzed jurisprudential opinions on ownership transfer without regard to modern registration requirements. Studies more closely related to the present discussion

include: the validity of ordinary documents in proving ownership of immovable property in Iranian judicial practice; comparative study of the jurisprudential foundations of sale (bay') and mandatory official registration; analysis of the legal effects of the Law on Mandatory Official Registration on the validity of transactions; and examination of public order and transactional security in Iran's property registration system.

Findings

1. Jurisprudential Foundations of Ownership Transfer Arising from Sale

In Imami jurisprudence, the transfer of ownership in a sale is effected through offer, acceptance, and the consent of the contracting parties. The fundamental condition for validity is mutual consent, and official registration is not a condition for the intrinsic validity of the transaction. This does not negate the utility of registration; rather, registration in jurisprudence is recognized more as a means of securing and protecting rights, not as a pillar of the transaction's validity.

According to the prevailing view of Imami jurists, a sale without official registration is jurisprudentially valid and enforceable, and ownership is transferred. This view is based on the principle of fulfilling contractual obligations and the necessity of respecting the consent of the contracting parties. However, if a transaction is not officially registered, it will face challenges at the stage of proof and enforceability in judicial authorities.

Throughout history, Imami jurists have addressed institutions such as testimony (shahadah), documentation (kitabah), and guarantee of recourse (daman al-darak) to protect the rights of the contracting parties and prevent disputes. These can be interpreted in the modern context as aligned with the objectives of official registration; however, they have not replaced the consent of the contracting parties in determining the validity of the transaction.

2. The Position of Official Registration in Iran's Legal System

Iran's legal system, emphasizing mandatory official registration of immovable property transactions, has identified its objective as maintaining public order and transactional security. Official registration, as a tool for documenting and clarifying transactions, prevents legal disputes and facilitates their resolution should they arise.

In the modern legal system, official documents possess special evidentiary value and, at the stage of proof, have greater enforceability compared to ordinary documents. This evidentiary value arises from the supervision exercised by the registration authority over the issuance of official documents, providing a guarantee for the accuracy of content and the consent of the contracting parties.

However, Iran's legal system still considers ordinary documents as valid to the extent that they do not conflict with procedural principles, and accepts

them as evidence in the absence of official documents. This has resulted in a dual situation at the stage of proving ownership.

3. Evaluation of the Law on Mandatory Official Registration of Immovable Property Transactions

The approval of the Law on Mandatory Official Registration by the Expediency Discernment Council indicates the legislator's attention to the necessity of official registration in maintaining public order and transactional security. However, this law, being inconsistent with the prevailing jurisprudential view, has failed to resolve the conflict between the two systems.

Rather than making validity conditional upon official registration, this law has limited the legal effects of non-registration; meaning that an unregistered transaction is jurisprudentially valid, but legally faces limitations at the stage of enforceability and proof. Nevertheless, disagreement among legal scholars and inconsistency in judicial practice regarding the recognition of ownership arising from ordinary documents continues to persist. Judicial practice is not uniform; some courts consider ordinary documents admissible for proving ownership, while others, relying on the Law on Mandatory Registration, deem them insufficiently valid.

4. The Solution of Distinguishing Between the Stage of Substantive Validity and the Stage of Proof

The findings indicate that the practical solution for resolving this conflict is to distinguish between the validity of the transaction at the stage of substantive validity and its enforceability at the stage of proof. From a jurisprudential perspective, the sale is valid and enforceable through offer, acceptance, and consent, and ownership is transferred; however, from a legal perspective, official registration is mandatory for enforceability in judicial authorities and for maintaining public order and transactional security.

This distinction, while preserving the Imami jurisprudential foundations, also satisfies the requirements of the modern legal system and prevents practical conflicts. A transaction that is not officially registered is jurisprudentially valid, but at the stage of proof and enforceability, its enforceability is limited, and the parties cannot fully benefit from its legal effects.

This approach, relying on the distinction between "validity" (sihhat) and "enforceability" (qabiliyyat-i istinad), enables the peaceful coexistence of both systems, and while respecting jurisprudential foundations, it also achieves the requirements of public order and transactional security.

Discussion

Although research has been conducted regarding the validity of ordinary and official documents and the conflict between jurisprudence and registration law, the present article, by focusing on the distinction between the stage of

substantive validity and the stage of proof and enforceability and linking it to the foundations of Imami jurisprudence and the requirements of the modern legal system, has arrived at a composite theory. In this theory, the validity of the transaction in the jurisprudential dimension and its enforceability in the legal dimension are distinguished as two independent levels, enabling the resolution of the conflict without negating either system. Furthermore, the present article is innovative in explaining the relationship between the Law on Mandatory Official Registration and the foundations of Imami jurisprudence.

Conclusion

The conflict between the jurisprudential and legal approaches to the transfer of ownership arising from the sale of immovable property is rooted in two distinct epistemic systems: the jurisprudential system that bases validity on offer, acceptance, and consent, and the legal system that considers mandatory official registration necessary for maintaining public order and transactional security. The approval of the Law on Mandatory Official Registration by the Expediency Discernment Council, despite its inconsistency with the prevailing jurisprudential view, has failed to fully resolve this conflict. The findings indicate that the solution lies in distinguishing between the validity of the transaction at the stage of substantive validity and its enforceability at the stage of proof; meaning that from a jurisprudential perspective, the sale is valid through offer, acceptance, and consent, but from a legal perspective, official registration is mandatory for enforceability in judicial authorities and for maintaining public order and transactional security. This approach, while preserving the foundations of Imami jurisprudence, also satisfies the requirements of the modern legal system and prevents practical conflicts.

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