



Research Paper

The Theory of "Nullity of Unauthorized Transactions": A Case Study of Islamic Denominations' Jurisprudence, English Law, and Iranian Law

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Abstract

Iranian civil law considers unauthorized transactions as non-enforceable. However, some Shiite jurists and certain Sunni schools assert that such transactions are void. The legal treatment of unauthorized transactions in English law differs from that in Iranian law; while Iranian law categorically regards unauthorized transactions as non-enforceable in all cases—regardless of whether the unauthorized party acts for themselves or on behalf of the owner, and irrespective of the buyer's awareness of the seller's lack of ownership—English law generally holds that these transactions are void. This means that a contract is devoid of any legal effect due to the absence of one or more essential conditions for the validity of transactions. Nevertheless, due to factors such as facilitating trade, recognizing possession as a form of ownership, and imposing legal effects based on the good intention of the buyer, this principle has exceptions that can render unauthorized transactions valid and enforceable. These exceptions include: estoppel, sales by commercial agents, sales in public markets, sales by possessing seller post-sale, a seller who continues to possess the property after the sale, sales by possessing buyer post-sale, sales based on revocable ownership. It appears that within Iranian law, particularly in the current commercial code, there are instances that can somewhat align with English law. This article employs an analytical-descriptive method based on reputable sources from Islamic jurisprudence, English law, and Iranian law to explore and examine the theory of nullity concerning unauthorized transactions.

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Extended Abstract

1- Introduction

Most Imami jurists (*fuqahā al-imāmīyah*) and Iranian legal scholars consider an unauthorized transaction (*mu'āmalah fuzūlī*) as non-enforceable. However, some early Imami jurists argue for the nullity of such transactions, believing that subsequent ratification by the owner cannot lead to contract formation. Among Sunni schools of law (*madhāhib ahl al-Sunnah*), there are divergent views; some consider such transactions void, others non-enforceable, and some differentiate between selling (*shirā'*) and buying (*bay'*). In English law, the general principle is that no one can transfer more than they possess. According to Section 21(1) of the UK Sale of Goods Act 1979, the principle is the nullity of unauthorized sales, where a buyer purchasing goods in good faith from an unauthorized seller does not acquire ownership. However, this principle encounters exceptions for reasons such as facilitating trade, recognizing possession as ownership, and imposing legal consequences based on the buyer's good faith. Exceptions include estoppel, sales by commercial agents, and others; if any of these exceptions apply, the concluded transaction is valid and effectively transfers ownership to the buyer.

In this research, after stating the ruling on unauthorized transactions from the perspective of Imami and Sunni jurists, we will examine the ruling on such transactions in English law and identify applicable instances in Iranian law. Despite numerous legal writings on unauthorized transactions by legal scholars, there appears to be no comprehensive work specifically

addressing the nullity of such transactions that considers all aspects of the topic. Most scholarly works focus on the theory of non-enforceability and its dimensions. Thus, this research will comparatively and descriptively analyze the theory of nullity in unauthorized transactions.

2- Method

The research was carried out using a descriptive-analytical method. The method of collecting information is document library. In this research, by referring to well-argued sources of books and articles, the necessary data has been collected.

3- Result

1. Due to the rejection of the concept of description in Imami jurisprudence and the lack of evidence from the verse "*tijāratan 'an tarāḍin*" regarding exclusivity—considering that the addressees of this verse are property owners—and also due to interpretations of nullity in referenced narrations concerning the lack of effect of unauthorized sales and the evidentiary nature of consensus, it can be argued that the theory of nullity in unauthorized transactions is untenable.
2. Sunni schools differ regarding unauthorized transactions; for instance, Hanbalis (*ḥanābilah*) and Shafi'i's (*shāfi'īyah*) advocate for their nullity, while Malikis (*mālikīyah*) consider them non-enforceable in both selling and buying scenarios, making their validity contingent upon owner's approval and ratification. Abu Hanifah distinguishes between selling and buying, deeming unauthorized sales



void but allowing unauthorized purchases contingent upon final owner's approval.

3. In English law, the principle is that unauthorized transactions are void; however, due to reasons such as facilitating trade, recognizing possession as ownership, and imposing legal effects based on buyer's good faith, this principle has exceptions.

4. In English law, if any of these exceptions exist, an unauthorized transaction is valid. These exceptions include estoppel, sales by commercial agents, sales in public markets, sales by possessors after a sale has occurred, sales by buyers who possess after a sale has occurred, and sales based on revocable ownership.

5. In Iranian law, there are instances where legislators recognize the validity of unauthorized transactions similar to English law without requiring owner consent; examples include transactions by commercial representatives and those conducted by managers of joint-stock companies or limited liability companies.

4- Conclusion

It seems that if an owner's silence is not based on a valid excuse, it should be interpreted as consent; because if the owner had not been silent, a good-faith buyer would certainly not have engaged

in such a transaction. The principle of transaction stability necessitates that when a transaction occurs without the owner's presence but they receive news about it yet remain silent without promptly expressing their opinion, this silence should be considered indicative of owner consent.

Justice and social order necessitate that in unauthorized transactions—especially when multiple successive transactions regarding an asset have occurred—the status of good-faith buyers should also be taken into account to affirm the validity of unauthorized transactions. This approach could reduce the influx of many related cases into the judicial system and significantly contribute to buyers' psychological comfort.

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6- Authors' contribution

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7- Conflict of Interest

Author declared no conflict of interest.

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