



## Research Paper

### The Impact of Attorney's Resignation on the Principal's Permission

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#### Abstract

Two legal institutions, actual usurpation) and quasi-usurpation, which address various forms of taking possession of another's property without permission, are mentioned in the Iranian Civil Code, specifically in Article 308. The latter is treated as equivalent to the former, implying shared rulings but different natures. The distinction between the two lies in the presence or absence of "transgression" ('udwan), or in other words, the "ill intent" of the person who has taken possession of another's property. In Iranian law, both carry equal and sometimes stringent rulings. This article, using a descriptive-analytical method, examines the arguments of those who equate the rulings of these two institutions, as well as the opinions of other jurists and contemporary scholars. It also includes a comparative study of civil laws from various countries and presents justifications for the unfairness of extending usurpation rulings to quasi-usurpation. The article suggests that, similar to the civil laws of many countries, the Iranian Civil Code should differentiate between the rulings of these two institutions. The strict rulings of actual usurpation should only apply in cases of proven ill intent, and in situations where such intent is not present, the objective ruling should be disregarded in instances that contradict rational principles.

#### Keywords:

Usurpation (*Ghasb*), *Quasi-usurpation* (*Shebh-e Ghasb*), *Contemporary jurists*, *Ruling*.

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## Extended Abstract

### 1- Introduction

Article 681 of the Civil Code presents a scenario where an Attorney can continue to act on the subject of the agency even after resignation, provided it is clear that the Principal has maintained their permission (idhn) and has not revoked it. This provision raises several questions:

1. If the contract is terminated by the Attorney's resignation, how can they continue to act on agency matters after resigning?
2. Should the effect of resignation be contingent upon the Principal's awareness?
3. More importantly, after resignation, should the presumption be in favor of the continuation or discontinuation of permission?
4. Does the Attorney need to inform the Principal about continuing the delegated matters?
5. Does Article 681 of the Civil Code cause practical problems?
6. Is the Attorney entitled to receive the contractual fee if they continue to act on agency matters?

Although the provision in Article 681 of the Civil Code contradicts the rules governing contracts ('uqud) and may lead to practical issues, due to legal considerations in the current legal system, an appropriate basis should be considered for it to derive other effects.

### 2- Method

This is influenced by disagreements about whether agency is a contract ('aqd) or a unilateral act ('iqā').

Various perspectives have been expressed in jurisprudential books and legal writings, each attempting to justify or shape the Attorney's action within one of the legal institutions. There is generally disagreement among Imāmīyyah jurists, while such disagreement does not exist among jurists of other Islamic schools, as they consider the Principal's awareness of

the Attorney's resignation as a condition for its effectiveness and validity.

### 3- Result

Most of these views are not compatible with the current state of the Civil Code. However, among them, the opinion that considers the effect of the Attorney's resignation contingent upon the Principal's awareness could be a very suitable justification. The criticism of this view is that although the legislator was in a position to state it, they remained silent about it.

Another view that aligns with the apparent meaning of the mentioned article and other Civil Code articles is that the offer (ṭjāb) through which the Principal announces their proposal to the Attorney contains permission to perform the agency matters. When the Attorney, after accepting this offer, terminates the contract on their part, the contract created based on the Principal's offer is dissolved. However, it does not affect the permission granted within the offer. For this reason, the Attorney can act on agency matters by ascertaining indications that show the continuation of permission.

### 4- Conclusion

The basis for such a secondary ruling is that the legislator largely respects the trust that people have in each other in social relationships. On this basis, in many cases, despite the Attorney's resignation, a situation may arise for the Attorney to perform an act that the resigned Attorney considers in the best interest of their former Principal. They act based on the previous authority derived from the agency contract to preserve the resulting situation for the Principal's benefit. On the other hand, attention is paid to the rights of third parties who, unknowingly or due to the Principal's unreasonable obstinacy, might



see their transaction with the former Attorney change to an unauthorized (*fuzulī*) status, while the third party relied on the former Attorney's title and entered into this transaction.

These considerations and potential benefits for the Principal, third party, and even the Attorney require the legislator to presume the continuation of the Principal's permission and give credibility to the Attorney's action. Since the agency contract is dissolved with the Attorney's resignation, they are not entitled to receive the contractual fee, but in this case, the rules of unjust enrichment (*'istīfā*) are applicable because there is no contractual basis or cause.

An Attorney who has resigned from their agency should inform their Principal about this matter so that the Principal can decide about their property and demand it from the Attorney, deposit it with them under other titles, or use the criterion of Article 668 of the Civil Code, which obliges the Attorney to give an account of the agency period and return what they have received on behalf of the Principal. Therefore, an Attorney who resigns from the agency must also fulfill this obligation and return the Principal's property to them. If the Attorney resigns and subsequently conducts a transaction on behalf of the Principal, and then the Principal becomes aware of the termination of the agency contract, in this case, since the Principal was not aware of the Attorney's resignation, it is assumed that their permission also remained unless the Principal proves that they had also terminated the contract before the transaction, or more precisely, had revoked their permission. However, if the Principal was aware of the Attorney's resignation, and then the Attorney conducts transactions on behalf of the Principal, and the Principal claims that they had revoked their permission at the time of the transaction, in this case, the Attorney must prove the continuation of the Principal's

permission considering the circumstances and conditions. This is because, regarding the agency contract itself, the principle is the absence of representation, and the claim of the party denying the agency is accepted.

Nevertheless, it seems that since the legislator has stated this authorization of the Attorney's action as an exception, and exceptions cannot be expanded, this ruling cannot be accepted as a rule. This is because the practical problems that may arise from it are undeniable and may outweigh its benefits. For this reason, it should be limited to the mentioned ruling. With these descriptions, although Article 681 of the Civil Code does not make the effect of the Attorney's resignation contingent upon the Principal's knowledge, it seems more appropriate to add this condition to the mentioned article. This is because it better serves the Principal's interest by allowing them to choose another Attorney for their affairs upon learning of the Attorney's resignation, and it prevents practical problems such as claims of unauthorized transactions. At the same time, legal rules come closer to their social aspect, as it must be accepted that even if we do not believe that the realization of legal acts is contingent upon the knowledge and awareness of the addressee and beneficiary, at least according to the normal course of people's lives in society, it should be accepted that in the stage of effectiveness, every legal act is contingent upon the knowledge and awareness of its beneficiary, and until then, despite the realization of the legal act, its effect is suspended.

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