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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

In civil law, following Islamic jurisprudence, two institutions of usurpation (ghasb) and quasi-usurpation (shebh-e ghasb) have been established regarding unauthorized possession of another's property. According to civil law and the well-known opinion of jurists, the rulings of usurpation extend to quasi-usurpation, including liability for benefits, whether utilized or not, and liability for loss even due to force majeure. This article first examines the concepts of usurpation and quasi-usurpation, then discusses their distinguishing elements, and addresses various instances and justifications for the unfairness of extending usurpation rulings to quasi-usurpation. These include references to the rule of possession by invalid contract (maqbuz be aqd-e fasid), the principle of good faith, and the principle of equity. Finally, a comparative study of civil laws in some Muslim countries and the opinions of some contemporary jurists is presented.

2- Method

This research, which examines the institutions of usurpation and quasi-usurpation, employs a moderating approach and critiques the extension of rulings using a descriptive-analytical method, referring to library sources.

3- Result

According to the well-known opinion of jurists and legal scholars, the rulings for quasi-usurpation are the same as those for actual usurpation. This article, through analytical and comparative study among contemporary jurists and civil laws of Muslim countries, yielded the following results:

1. Contrary to the opinion of some legal scholars and jurists, the distinction between actual usurpation and quasi-usurpation is not in the initial nature of possession in actual usurpation and the non-initial nature in quasi-usurpation. Rather, the distinction lies in the presence or absence of transgression ('udwan). Wherever transgression exists, it will be actual usurpation, and the individual is obliged to compensate for all damages. However, where there is no transgression and the individual is ignorant of the property belonging to another, it will be quasi-usurpation.
2. There is not a complete overlap in rulings between these two institutions. Quasi-usurpation, unlike actual usurpation, lacks the element of transgression and ill intent, which is sufficient to cause differences in many rulings.
3. In legal doctrine, using the absoluteness and generality of civil law articles, there is a theory that in the rule of "ma yudhman" (what is guaranteed), only the principal state of this rule applies. This article concludes that both the principal and the inverse of the rule apply in civil law.
4. In case of property loss in the possession of the usurper due to natural disasters, it appears that the usurper should not be held liable. This would apply to both actual and quasi-usurpation, with the rule of priority applying to quasi-usurpation.

4- Conclusion

This article concludes that the rule of "ma yudhman" and its inverse, contrary to some legal scholars' opinions, apply in Iranian law. Regarding the knowledge and ignorance of the property possessor, although civil law appears to treat them equally in many rulings, we should deviate from this appearance and differentiate between knowledge and ignorance, and good faith and bad faith in determining liability. This can be considered in future civil law amendments, as many countries' laws, including those of Muslim countries, differentiate between the knowledge and ignorance of the possessor. Moreover,

justice and equity require distinguishing between a knowledgeable person with transgression and an ignorant person when imposing rulings. While the basis for strictness in actual usurpation is the rule "al-ghasb yu'khadh bi-ashaqq al-ahwal" (usurpation is dealt with in the strictest manner), some jurists agree with this rule and believe it applies absolutely to any unauthorized possession of another's property. As a result, the aforementioned rule applies wherever there is domination or possession of another's property without legal permission, whether the dominator or possessor is a usurper or quasi-usurper with ill intent and knowledge ('udwan), or a quasi-usurper with good intent (jahil). However, it seems necessary to abandon this generalization and absoluteness; because reliance on generalization and absoluteness is only valid when the statement is issued by an Infallible (ma'sum) source and there is no doubt about its authenticity. In this case, considering the opinions of some jurists, one should rely on a view that distinguishes between the responsibility of the ignorant and the knowledgeable individual, examining the burden of liability in each case specifically, as was explained in the article regarding the liability of property received through an invalid contract (maqbud bi-'aqd fasid).

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