

Validation limits of acquisition rule and adaptive study of it with French rights

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Abstract

Among the rules of law, rule of Possession (Acquisition rule) the most famous and prestigious rules used in Iranian law one of the most important ways of acquiring property and then is proving ownership. The value seizure As proof of ownership in the dispute is to what extent, the limits and the circle including how much And finally in a position of conflict with other evidence proving ownership of the extent to survive, including In this study the most important issues that have been dealt with comprehensively and accurately. This research Present to signs of ownership about the validity and comparative study was conducted by French law, iodine and one of the reasons possession of proof of ownership in Islamic jurisprudence, law and French law is Iran. acquisition and deciding ownership seizure Circumstantial evidence to prove ownership of property and in the struggle, iodine should be seized property, as well as Fixed a duress claim legal basis for denial of personal rights and the fight due This is the real owner of divorce protection against iodine is in conflict with that norm. So either The provisions relating to the dispute should be remedied or should he fights as new problems accordingly confirmed its authenticity.

Keywords: seizure, seizure sign, acquisition rule, possession, French rights.

Introduction

Nowadays, with complex social relations, material possessions simple way to credit the concept of data ownership is. Today, through acts of ownership of the objects so that entirely new content and based on A series of social contracts and deeds of ownership and legal establishment of new quality It is assumed credit agreement and the property of simple possession of a document of ownership (applicable) has changed. So, despite the complexity of the rule of human actions on objects for quality Physical simple and complex forms of credit, today many possessions and goods, and the most obvious sign Object belongs to someone, it is a physical object in real Domination¹. In article 2228 of civil code in French, ownership defined: is determining possession or transfer from another or right which directly have been done through another one, and seems that this division (In 2228 article) was because of French legislator. Iranian legal system, despite enjoying legal experience of some European countries since the beginning of the Islamic jurisprudence and especially Shiite jurisprudence strong foundation has been built. The Jurisprudence in many cases the legal rules are based on the origin of deduction, is limited and does not have the particular case. Among the rules of law, the presumption seizure one of the most famous and most prestigious legal rules that are used in many legal issues and documented. Iodine is most characteristically dominated possession and exercise of the right of ownership. In French and some other countries European acceptance of the principle of limitation of property less the same since 1850 AD found for this serious fans Credo French courts in this case were tried to the following principle: no owner cannot In addition to damages and losses neighbor adjacency common cause discomfort. Choosing the motivation this practical application, and to a large extent it is always investigate it on any Taliban it is the science of law. And it makes learning easier and recalling sentences, the relationship between the individual concrete Object belonging to the person, more aware, and if the dispute about the inclusion of this rule there, with the help of documentation and the provisions of this statistic, we fix them. The aim of this study was to investigate Seizure and comparative study with French law presumption of validity that because of the background to this topic The opinions of lawyers in Iran and French to a comparative analysis between Iran and French pays to The following is expressed many questions answered.

1- What are possession instruments in Iran and French are the property? Is the rule iodine, statistic or a practical principle?

2. Is use of the term should be means of domination and possession of religious truth or Muslims juristic or authorized? Whether for proof of ownership in the struggle, iodine should be accompanied by the seizure of property and iodine value and credibility? Seizure as one of the causes of acquisition of ownership in the Iranian legal system and how much is French? So, To encourage mind and answer these questions, topics in the UAE, types and their differences Each other as well as seizure time limits and duress of occupation as well as case law fixes Iran and French were tested and in subsequent discussions and expert opinion, experts and finally, conclusions And suggestions are considered.

¹ Mohaghegh Damad, Seyed Mostafa, jurisprudence rules, 1987, 1th Ed, Pages 30

Circumstantial sign

Something that is positive circumstantial evidence topic of religious orders and the discovery of fact, H. "Is known. In Iranian law circumstantial evidence is twofold: legal jurisdiction and judicial jurisdiction.

1-3- Conflict of legal jurisdiction and judicial jurisdiction

In cases where the legal circumstantial evidence in one direction, the boost in that direction, potentially causing In order to prove to be strengthened. But in cases of conflict Emirates, have said that if the Emirates on both sides Legal or not legal and are preferred, such as conflict both because both are void. But if one hit is legal and the judicial jurisdiction, judicial jurisdiction is valid and have legal jurisdiction be ignored. Because there is a suspicion-based legal jurisdiction. On the other hand we can say that Nearly Justice Statistics arguments and legal Emirates are close to the practical principles and it is true that both Circumstantial evidence and partly discoverer of fact, but it is more exploration of judicial jurisdiction, the presumption front is. In cases where the judge imposed a new rule or presumption that the legal Emirates Provide legal, valid immediately until it knows that because otherwise not be available, so if there is a legal presumption, the presumption is preferred. 300 and 302 of the Civil Procedure Code The former also clearly demonstrated the superiority of judicial jurisdiction over legal jurisdiction. So if someone claims On the other hand is a quality that belongs to him. If the other side to seizure statistics and iodine Appeal. Listed in Article 35 of the Civil Code and is known as legal jurisdiction. And on the basis of circumstantial evidence should know their owner; if you claim to know the details of the case but no occupants could give details of the cases, bags and mandate must be given to claim ownership of it. Because sign in this example, cut to the owner of a judicial claim can be found in general presumption and circumstantial evidence conflict Judicial, judicial jurisdiction has precedence over legal jurisdiction². As a result, circumstantial evidence must be that presumption, nor circumstantial evidence Judicial, if not conflict with judicial jurisdiction, judicial jurisdiction must be preceded by circumstantial evidence.

2- Fixed a duress claim foundations.

Why should receive such support several foundations listed. That is to say each of them and in the end we account for the more correct picks.

2-1- Credit conditions seize circumstantial evidence

Obviously, not every possession of property. Therefore, possession of property that has Two basic condition: the seizure or the other, such as non-tenure but Molly property against or at the same lease because the tenant occupied property, and if the proprietor wants to seizure their due its property, the property must also be seizure. So who as trustee or agent other taxes are under control, not the owner. For example, if the father custody of a child He seized his property, or the child can no longer rely seizure and claims unlike the carnal desires that seize their property and the existing, prove in court. Because in these who knows the common property in subjection to the account or ordered him to seizure other measures have³. Seemingly legitimate possessions whose history is not clear ⁴who is angry and

² Mohammadi Abolhassan, concepts of inferring Islamic rights with jurisprudence foundations, 2002, pages 272.

³ Katouzian, Naser, Belongings and possession, 2008, pages 196 & 197.

⁴ Katouzian, Naser, civil rights in current law, 1998, page 50.

dominant financial force the right to use signs does not seizure. Because it does not support the aggressor rights and legitimate tenure is respected. In this case, the occupants do not have to prove the legitimacy of their occupation and who Expropriation she wants to nullify the legal jurisdiction, must prove that the possessor of a legitimate way to Property is not achieved. So seizure must be legitimate, but possess no need to prove it. At Property claims, the lawsuit asserts that the proprietor is a must to discredit him Signs of ownership to prove that the seizure of the Momallek not legal or carriers. As well as that of has assumed control of the legitimate rule of law is understood and claimed to be contrary to the assumption Prove in court. So that Article 36 of the Civil Code or carrier seizure that proved to be caused by the Momallek Not legally valid and does not know⁵. Also in pursuit of the same Article 37 of the Civil Code states that if The current occupants of the property formerly belonged to confess that he has been claiming in this case, the contribution cannot layer Rejected claims referring to seizure the said person, unless the carrier proves that the property He has been transferred correctly. Because then it is certain that the person occupying the property confess His former contender, fight and seizure your heart as unstable ownership and to Istishab The survival of the occupants can claim ownership of the former owner of his other occupation as property, unless the Prove that the property is under the ownership of one of the toys has been transferred correctly to him⁶.

2-2-prove power of possession sign

Seizure support for security and public order is essential. For someone who seems virtually owner is a civil right, until it is proven otherwise, he will be valid right .based on law, Proof of ownership is the same as for other means of proof required by law, but about ownership Article 35 Civil law to seize evidence⁷. Civil law who possess financial, its owner knows. For possession or concomitant with ownership of the property he is occupying, or according to Article 35 Civil law for property seized as property, unless the contrary is proved. So seizure Statistic. The reason is that the ownership of the property seized is seized evidence and therefore Survive and not conflict with other reasons. Law who has seizure your financial products. He knows it, of expressing another reason is exempted and the other party must prove that he possessed a usurper And possession cause it is not available. Special seize property and in the interests of the presumption of Lords Current law also applies⁸. Of course, if the legislator seizes the property because, since it is usually any property or right in Possession of its owner. That's why the courts should holder owner of the property or the right to know, unless the Photo proven. The person occupying the position so that his possession is evidence of ownership will be far more beneficial is the position of his hand. Because that seizure the defendant Authentication and will not have to prove that allegation, but the proof of the claim against him Finds that the will be claim⁹. As a result, the possessor to prove his ownership another reason is the need to signs of ownership of Iranian law and reason Property seized is known. In all cases involving the property, whether movable property or other immovable property the claimant must prove their legitimacy against

⁵ Katouzian, Naser, *Belongings and possession*, 2008, page 197.

⁶ Adl, Mostafa, *civil rights*, Ghazvin, 2006, page 45.

⁷ Adl, like before, page 42.

⁸ Katouzian, Naser, *Belongings and possession*, 2005, page 49.

⁹ Adl Mostafa, *civil rights*, 2006, page 45.

holder¹⁰. In other words, property disputes, always Seizure and denied the defendant has the burden of proof on the shoulders of someone who wants to contrary evidence Prove legal possession. So if someone claims to be a quality that is on the other hand, belongs to him. The conclusion that can be drawn is that circumstantial evidence should the legal jurisdiction, not judicial jurisdiction. Because in 1332 article in civil law, we can say that Emirati legal presumption that the law because it is put on, like UAE referred to in the Act, such as materials of 35, 109, 110, 1158 & 1159 and except them and other the presumption stipulated in other Laws. Therefore, the presumption should not conflict with judicial jurisdiction, judicial jurisdiction over the legal presumption of iodine, which together with the front screw.

2-3- Implication of ownership on possession

The main purpose of the acquisition of property (both movable and immovable) utilization of their interests. So property without such a target, not rational meaning to the fact that if no object Interest and is unusable, property and ownership is not considered. The acquisition of objects in general and Property ownership is nothing, except through the use and exploitation of property and interests to achieve it, along with the It is customary concepts (possession and use of property) and their incorporation into each other is so obviously in Custom any evidences of the existence of other evidence and is assumed¹¹. Civil Code Article 35 an impressive seizure as the property is known. Of course, this expression derived from Jurisprudence of course should not assume that a continuity between the possessions of non-infringement there are as many cases of persons that result because they are not property and therefore the above article continues: "unless the contrary is proved." In this case, some scholars believe, Even if holder and does not admit to their lack of knowledge of possess property belonging to him or not, in this is not the current rule. Such as personal confession find money in your house because People come and go in the house he had, who knows the money belongs to. In such instances the money is subject to the provisions Lqth, such as those in the possession of another's property with the permission of the owner or occupant and invading someone's property without the owner's permission to seize. With regard to the cases that seizure the soul fraudness and an emirate is relative, not absolute. An important benefit is the protection of the law of occupation The possessor to prove his ownership right is always a difficult task because it is independent Occupants can seizure such litigation for dispute about ownership position Read (defendant) to secure and facilitate that Article 1257 of the Civil Code attaches to Read And general assignments filed proof of claim to the right to demand the set¹². In other words, supporting the seizure, in most cases, because in fact seized property protection Semblance of a legal situation which often corresponds to the truth, in most cases the rightful owner As well as seized. Thus supporting the seizure, property protection would be for the community Is a special order it is necessary that each person's property laws and regulations regarding observe the ownership of the mainstream so as long as the illegitimacy of mutual Persons and property has not been proven. These relations should be protected by law and state law enforcement should support relationships, and because of the disruption and inconvenience this prevents relations Why is that necessary to maintain public order

¹⁰ Shams Abdoullah, code of civil procedure, Tehran, 2006, Edition 3, Page 367

¹¹ Colin et Capitant, 1995 , p41; Mazeaud et Chabas,1, p1413.

¹² Matin Daftari, code of civil & bussines civil procedure, 1998, pages 235-236.

3. Seizure time

Seizure time can be read to want and to be evaluated.

3-1- Seizure time than Creditor

Material 627, 621 and 622 of the old Civil Procedure, a condition of winning the takeover of the claims Elevated possessions had been called at least a year. The new law is also a former possessions accordingly, the conflict has not been determined and it is in this debate. The new law is silent 3 opinion is expressed about the condition of time possession is: The first legislator to put off it was a condition of the former conquest of the former conquest by eliminating the requirement to be short though, about Provide support. And so the court should investigate this case. Second opinion, because staying silent condition remove it, but the fact that nearly sixty years and even customs regulations Less than a year dominance in this regard, the seizure was not justified, the legislator stipulated the condition waste has to know and avoid. Third in terms of law for the judge to put off condition the judge has given the necessary freedom with regard to all the circumstances, ushering in a period of domination Former sufficient or insufficient to detect. In fact, the style of previous occupations and actions that the former occupants in the property, property type and so can the next time the court is seized. The reception Second Opinion on strengthening the discipline hearing and prevent interpretation is effective: The third option Compatibility Prime accordance with the principles of justice and more current texts. So, as the AH. C. along Previous calls for seizure of the legal requirement in principle do not put seizing victory in lawsuits No demand for iodine possessions or their agents for pre-seizure add course¹³. If you accept the terms of the second or third time adding iodine pre-occupation for possession claims, despite the lack stipulated in the new law is defensible

3-2- Seizure time than called

The old law of civil procedure to determine the material for at least a year for elevated seized 326-328 whether he requires that within a year from the date of duress, harassment or denial of the right be litigated. Articles 8 and 40 of Law Legal Procedure for action in court within 3 months disturbing the occupants put on. The new Law of Civil Procedure are silent in this regard and thus no way to accept any of the three that will be presented. In French, if Read after the expiry of one year from the date of seizure lawsuits filed seizure is prohibited. There it is believed the occupants, even with the continued forcible seizure more than a year in the same property Possessions seized in lawsuits that the law should support him despite¹⁴. In Iran, the idea Silence of the new law (Code of Civil Procedure General and Revolutionary Courts) is untenable.

4- Concepts of argues of fixing disseise in Iran and French rights

4-1-possession rights

In French and some other European countries accept the principle of limitation of ownership about the year 1850 AD For these serious fans Credo French courts in this case were tied to the following principles: Maliki cannot do to your neighbor losses and damages in addition to the proximity common problems Cause. Including those of the French Court approved and

¹³ Ghaffari Gholamreza, ownership in attitude of law, 2006, page 11.

¹⁴ Ghaffari like before, page 15.

voted three things: Drilled Well fertilizer plant and soot bathroom: French courts for a neighbor who raped practical your neighbor is actually two rights are attached: (i) the prohibition of the right to claim losses from continuing and repeat harmful operations. It should be specified owner insofar as it does not exceed and traverse the extent of the And striving French unforeseen damages in civil law courts identify it with the And the theory of legal restrictions on ownership, including tasks that due to efforts of the French courts. Accept and act is located. But among the new and old authors and heads of law schools to determine the operation of a restrictive criterion for differentiating between different theories have been expressed that the most important of them are as follows:

a. Semi contract theory

This theory first opinion while literature professor, is famous Patiyeh The scientist in between the two neighbors is a quasi-contract whereby no neighbor should Be intrusive and detrimental to the neighborhood¹⁵.

b. Semi crime theory

Some recent authors have rejected the idea of semi-contract, and this in theory Tort is linked. They say by Article 1382 French Civil Code, “any person who Error aside damages it has caused to be committed to its restoration force. According to the theory of error Composition and thereby essentially civil actions and activities in the society should not harm others Otherwise; its effects should be compensated. So the theory that the property owner is operating the worries and losses negligible around a common origin proximity raped and neighboring damage must compensate for damages¹⁶.

c. Abuse theory from possession right:

A number of years to the present, in Europe known legal theory toward Use the right was announced whereby if right holders abuse and malicious intention of Exceed reasonable limits to their rights and their right to abuse others were harmful and it since it will not be much support. But this theory also believes in property rights. In theory, create According to this theory the risk of any economic activity in the community and in particular the possible use of property others will be harmful and this creates the risk of losses they entail losses & in other interpretation: “Of his sheep, he pays”¹⁷.

4-2- cases of accuracy trust and lack of accuracy trust in possession

Iodine authority and relies on only in cases where the ownership is unknown and mode of occurrence of iodine in After the property is likely in cases where state ownership was evident that lack of iodine in iodine are Origination, property should not usurping such as iodine and iodine hired and current regulation will not be because Mstyr etc. If no such Istishab convert iodine and its survival is the current record mode. So if the regulation should What is the ruling on Istishab but Hkvmyt it is just about Istishab of iodine Bmvdav And from there it is now said that the testator when he or she claims holder admit possessing of Claim will revolutionize and admits that he prove his ownership.

5. Conclusions

A long-established property rights that has been venerated in all ages and ethnicities. What brought people to their property or bring to it, if you could legitimately education Social and

¹⁵ Katouzian, civil rights, public theory of commitments, 2003, page 2.

¹⁶ Madani, Dr seyed Jalal oldin, code of civil procedure, 1997, page 408.

¹⁷ Abedini, Ahmad “rule of human blood worth, 2004, pages 44-79.

regulations were backing the perspective of logic. Thus, those who own Ghyrtslt development, will be the sponsor of any defect. So as long as the property has been looted the owner did not return the same sponsor and its benefits will be seized. In this respect, no matter who prevailed with Knowledge of the lack of legitimacy of the property seized or without the knowledge of the decision or issue to do so. At Now also claims regulations governing the takeover of the Law amending the Law on Prevention of duress Act, 1352 constitutes the Penal Code and the Civil Procedure Code. Analytical review of the law was done in this case. Principles of interpretation, in addition to Article 529 of the same law requires it Provisions of Act of 1352 that are inconsistent with the new Act and the amended Law Courts General and not revolution, including its Article 1 stipulates that "each case that someone outside the property Real estate without the consent of the proprietor seizure or disturb him, and the use of seized officers Police and Gendarmerie each in the area of their jurisdiction are obliged to apply complained of harassment and The duress of measures to prevent such acts, although according to claim rights Than it is mine "to be considered valid. The important thing here for a months referred to in Article 2 Act 52 and the competent authority mentioned in this article. This text provides that: If one person's property Real estate that has been in the possession of non-Dvana occupy or have occupied meanies or Use the right or easement profit be prevented. More than one month from the date of seizure or begin Interfere with or inhibit the location of the property has not passed, the city prosecutor or magistrate courts independent sector And Mobile, on behalf of the prosecution in their jurisdiction are obliged to consider the plaintiffs' verdict Pertinent issue. Although these actions have invoked its right to claim, "Seizure crime the establishment of an absolute crime of forcible seizure is sufficient to fulfill the offense and the offense is subject to Realizing the result is not to say that in the event of failure to achieve the results we achieve crime also dropped. Some without knowing the absolute mass of pent-crime distinguish the crime have expressed duress the realization of this crime subject to seizure or rightful introduce themselves or others or to repel any aggression or duress so if actions are not conducive to achieving such results from 690 examples of the crime will not be material. If we are guilty of an offense and is subject to the fulfillment of pent-bound action As we get material from the above expression, in this case the majority of the crimes are somehow bound Are viewed as primarily a crime does not occur because the physical act without realizing, for example, by describing crime It is bound to apply insulting or offensive words and phrases that someone be issued or mass fabrication Is bound to change someone or making or writing the document. While the perception of crime Tying very strange and far-fetched because the crimes described is bound to act Physical material element of the crime is not sufficient to achieve and legislators to complete the material element of crime Subject to fulfillment of another agent knows that he is in the operating result. For example, offenses, theft, breach of Trust and tricks on using or appropriating someone else to realize that crime does not suffice Login harm to the victim should also be established. Despite the different principles for resolving the conflict duress the text on the circumstances of time and place are mentioned, it seems the legal basis for resolving disputes duress Non personal rights that aspect of public order and social peace is preserved.

6- Suggestions

He was to seizure someone else's personal property immediately after becoming aware of this complaint And negligence lawsuit filed in as they may not spend the time possessed The

current elevated measures to eliminate his possession and occupation of the former occupants prove difficult. This proposal you should take legal and guaranteed to be implemented. It is suggested that dispute It also extended the duress of property that can be seized movable property and material values necessary To provide the complainant with the complaint have accepted the arguments of law can be established Former seizure to prove Since the dispute duress and harassment and denial of the right to public order linked to suggest that the law in dealing with these issues, the maximum penalty If the law unconstitutional seizure of the defendant to prove their sentence.

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