Investigating Sanction of the Conditions in the Settlement Contract with Regard to Registration of Deeds and Real Estate

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Abstract

Considering that Articles 47 and 48 of the Registration Law have stated that registration of the document of settlement contract is obligatory and its sanction is the non-acceptability of unofficial documents in courts and departments. However, it must be said that these articles do not declare the invalidity of normal documents absolutely, but the meaning of the non-acceptability of such documents is that they cannot be referred to in relation to third parties, while such documents are valid and authentic for the parties to the contract, and because of the fact that the document is a normal contract, the parties to the contract cannot refuse to fulfill their commitment and execute the contract by the excuse that such documents must have been registered in accordance with the law. Therefore, referring to ordinary settlement agreement, the grantee cannot claim the propriety of some property against persons other than grantor, but in the case of denial of the occurrence of a transaction between the parties to the settlement, the beneficiary can refer to the ordinary document of that transaction to prove the occurrence of the transaction between themselves and the other person, and such a reference is reviewable by the court. In addition to that the grantor and grantee can refer to ordinary document and any provable evidence in their controversy and dispute about the settlement subject and prove the occurrence of settlement, the grantee can bring an action against the grantor and obligate them to arrange an official settlement document by proving the settlement and by invoking to Article 220 of the Civil Code, because according to the mentioned article, transactors are not only committed to what is stated in the contract, but are also committed to all the results of the contract in accordance with customs or law. However, if a dispute occurs between the grantee and a third party about the settlement subject and an action is brought, then if the grantee presents the ordinary settlement document to prove their ownership, the court according to the Registration Law will not consider that document effective, and the grantee may even be convicted against the third party. The settlement is not correct if its provisions are contrary to the law, order and the general rules, and if the settlement document arranged in a notary office has a substantive, procedural or legal problem then the competent legal authorities such as the High Council of Registry investigate the issue and the provisions applicable will be issued.

Keywords: Grantor, Grantee, Settlement contract, Sanction of settlement contract, Official document.

Introduction

Settlement in the language means agreement, peace and compromise. There is no definition of settlement in the Iranian law, but it has been accepted in its broad sense in the Civil Code, and articles and provisions have also been assigned to it.

Settlement has a broad domain. Therefore, it is referred to as the Master of Contracts and the Master of Sentences in jurisprudence, and this broad domain is what has caused the inability to present an acceptable definition for it and the difficulty to distinguish it from other contracts.

Anyway, what should be considered is the main nature of settlement, namely, peace, compromise and agreement, which is the essence and nature of the settlement contract distinguishing it from other contracts.

The conditions for the validity of the settlement contract are stated in the Civil Code, and this contract is dealt with in the articles 752 to 770.

As noted above, the main subject of this research is the settlement contract because, in accordance with paragraph 2 of Article 47 of the Registration Law, the settlement contract must be in the form of an official document and be registered, and in accordance with Article 48 of the mentioned law, a document that has not been registered will not be accepted in any official department and court. According to Article 30 of the Notaries Act, Notaries “are obliged to arrange and register the documents of the clients unless the provisions of the document are contrary to the laws, regulations and the public order or good behavior...”, and if stated that the conditions set forth in the settlement document are not contrary to the laws, regulations and public order or good behavior and there is no reason to refuse to arrange and register these documents.

When the benefits of the settlement subject are conditioned as lifetime for the grantor in the contract, which are in fact for them, the intention of the parties is to fulfill the settlement contract, but the benefits of the settlement subject are available to the grantor for their lifetime, and after the death of the grantor, the benefits follow the settlement subject itself and will not be transmitted to their heirs, even if the stewardship clause for benefiting from the benefits of the settlement subject was not included in the contract. The grantor can grant the benefits until their lifetime to another person. However, after their death, the benefits as long as the subject itself will be a propriety of the grantee, since the grantor does not have any right in the benefits.

First subject: The Settlement Contract

First Speech: The juridical and legal definition of a settlement contract

Jurists and legists have provided numerous definitions for settlement contract, which are not unlike each other and induce almost identical concept of this contract. We will discuss some of these definitions in the following.

Settlement in language means compromise, reconciliation and agreement, and in the Qur'an and our tradition, the settlement contract is also used to bring the case to an end. (Dehkhoda, 1994, 1020: 14). There is, of course, no need to have a dispute so that settlement agreement can be used,

but settlement agreement and settlement contract can be a means of a transaction or rent. Settlement is infinitive and means reconciliation, peace and agreement. It refers to the agreement and compromise upon a subject, like the possession of an object or benefit or extinction of a debt, right or so on (Imami, 1993, 315: 2). In the laws of some countries, settlement contract is used only to prevent litigation and end a case (Article 2044 of the French Civil Code). Therefore, settlement is a contract in which the two parties agree on some subject without their agreement being understood as one of the familiar titles of contracts (such as purchasing, renting and mortgaging, etc.) (Jafari Langroudi, 2008, 408).

First Paragraph: Juridical Definition of Settlement Contract

Settlement contract is one of the specific contracts that are discussed in the jurisprudence. Settlement contract, as many jurists have said, is a contract legislated to resolve the dispute. However, this definition, according to many jurists, only expresses the doctrine of legislating of settlement contract, not its reason. And on this basis, the legitimacy of settlement contract is not limited to cases where there is a conflict or a dispute, but settlement contract is independent contract that has legitimacy and credibility along with other contracts.

The above-mentioned broad view about settlement contract is agreed among Shiite jurists, and apparently, Shiite jurists have no doubt in this concern. The only disagreement among Imamiyya jurists is whether the settlement contract is independent in the cases where it has the same result of other contracts or it is a branch of those contracts?

Sheikh Tousi, in the “Mabsout” book believes that settlement is a branch of the five contracts of purchase, lease, donation, loan and discharge (Tousi, 2008, 62). However, the jurists after him (later) did not accept this speech, arguing that the settlement contract, although has the benefit and the outcome of other contracts in some cases, but this does not cause this contract to be part of those contracts; in addition to the fact that the settlement reasons clearly indicate the independence of this contract along with other contracts. Imamiyya jurists, unlike some of the general public and what the French jurists believe, consider that the main objective of settlement legislation is to eliminate hostility and disagreement, and there is no impediment to be a transaction means. Because its legitimacy has been ruled out in some fundamental texts without observing any constraint for dispute removal. Moreover, there is no reason to confine it to “dispute prevention” in other sources (Shahid Sani, 1992, 267).

Second Paragraph: Legal Definition of Settlement Contract

The Civil Code of our country has not defined settlement contract, and it refers only to the application of settlement contract that is used to resolve the existing dispute or prevent possible dispute.

Section 17 (Articles 752-770) of the Civil Code has been devoted to settlement and its conditions.

Article 752 of this Code states: “A settlement of account is possible either in the case of the adjustment of an existing dispute, or for avoidance of a possible dispute in the case of a transaction

and the like.” However, settlement is an agreement and compromise upon a subject, like the possession of an object or benefit or extinction of a debt, right or so on, even though settlement legislation is to end hostility and to eliminate the dispute among people, but it is not intended only for this and it is not conditioned to be after the dispute and hostility (Boroujerdi Abdeh, 2001, 306). Dr. Imami states in the definition of settlement contract: “Settlement is an agreement and compromise upon a subject, like possessing an object or benefit or extinction of a debt, right or so on.” (Imami, 1993, 315). Iran’s Civil Code states in the definition of settlement in Article 752: “A settlement of account is possible either in the case of the adjustment of an existing dispute, or for avoidance of a possible dispute in the case of a transaction and the like.” Article 758 states: “A settlement made in respect of a transaction, though it provides the final result of the transaction which it replaces, does not include the special conditions and attributes of the transaction. Therefore, if the subject of settlement is a definite object given in return for a consideration, its results will be the result of a sale, without the execution of the special conditions and rules appertaining to a sale.” Thus, there is no limitation to settlement subject, but it is a contract that is the widest of all the specified contracts, which is provided to fulfill voluntarism (Katouzian, 2014, 299: 2).

Second Speech: Elements of Settlement

Five elements have been defined for settlement, of which, only one is agreed upon among legists; these elements are:

- a. Mutual consent
- b. Hostility precedes settlement
- c. The prerequisite for the right in the relationship of settlement parties
- d. An utterance or a written note indicating agreement
- e. The settlement subject being known and the ability to deliver it (Jafari Langroudi, 2009, 135).

Imam Khomeini (r) says: Settlement is an agreement and compromise upon a subject, like the possession of an object or benefit or extinction of a debt, right or so on. Being preceded by dispute is not a valid condition for it, and it is permissible and permitted to be used in any position, except in cases where the settlement contract forbids permitted things or permits forbidden things. Subjects that Imam Khomeini excluded are untransferrable or unabandoned rights such as the right to claim debt, the right to return of a recoverable divorce and the like, as well as usurious settlement (Khomeini, 1994, 124).

Article 758 of the Civil Code explicitly states that being preceded by dispute is not a main element of the settlement contract; this article states: “A settlement made in respect of a transaction, though it provides the final result of the transaction which it replaces, does not include the special conditions and attributes of the transaction. Therefore, if the subject of settlement is a definite object given in return for a consideration, its results will be the result of a sale, without the

execution of the special conditions and rules appertaining to a sale.” Therefore, settlement can act like any other contract, and here, primal settlement is not devoted to settlement contract that is preceded by right and the existence of dispute or a possible dispute. So the term “primal settlement” has two meanings:

1. General meaning, that is a settlement made to remove possible and actual dispute whether it is preceded by right or not.
2. Specific meaning, that is a settlement that is not preceded by right and not made to remove actual or possible dispute.

On the other hand, there is a viewpoint difference among jurists concerning the necessity of an utterance or a written note indicating offer and acceptance in the settlement contract, because the great extent of settlement contract makes it hard and difficult to imagine the possibility that offer and acceptance could be reached without including an utterance or a written note, but nevertheless, the jurists believe that settlement of mind is also conceivable, so the utterance or the written note of offer and acceptance can be not considered as an element of the settlement contract (Jafari Langroudi, 2009, 236-237).

The pillars of settlement contract in the law are:

Grantor: The person who transfers a property to another.

Grantee: The person who accepts the property.

Settlement subject: The property on which the settlement contract is made.

Settlement consideration: The money or property that a party receives from the other in exchange for a settlement offer.

Third speech: The conditions in settlement contract

In the Iranian Civil Code, according to the jurisprudents of Europe, by stating Article 10 of the Civil Code based on the freewill in transactions: “Private contracts shall be binding on those who have signed them, providing they are not contrary to the explicit Provisions of a law.”, any commitment that is not explicitly contrary to the laws of a country can be accepted, and the parties to transaction are not required to enter their transaction as one of specific contracts or as a condition in the contract, but due to the familiarity of public opinion with the provisions of the Imamiyya law, this method is still followed in communities, and notary offices place the commitments that are not arising from specific contracts in the contract and insist to put the condition in the contract if a certain contract is not really binding and write in the arranged document that it is conditioned in the collateral binding contract. The condition is conventionally a commitment put up in another contract. The mentioned condition has been used in the clearness meaning. That is to become obligated and committed to a subject, as if to say he conditioned to something meaning that he is obligated to this, and it is conditioned for him means that he obligates someone in favor of him. Commitment is sometimes independently contracted, and sometimes it comes into existence under a contract and an independent commitment and, as a result of this, it will obtain a subordinate

aspect that is called a condition in the contract. The condition may be placed in an onerous contract, such as that someone sells a house to another by 500,000 Rials, while also requiring the purchaser to give him a certain car for free. It is possible that a condition is put in a bare contract, such as that someone grants his house as a gift to another, while conditioning that gifted builds a building for the giver according to certain map (Vahid Khah, 2010, 23).

The condition (secondary obligation) has a dependency on and a close relation with the contract placed in which (main obligation), and they form together a unified contract for the following:

- a. If the main obligation is void in a way or another, the condition in it will be void, because the legal existence of a condition depends on the legal existence of the main obligation, but on the contrary, if the condition in the contract is void, the main obligation will not be void unless when the existence of the condition causes disruption in one of the essential conditions of the authenticity of the contract, because the main obligation is an independent legal entity.
- b. If a revocable contract is made as a condition in the binding contract, the binding power of the main contract affects and validates the condition in it, and the revocable contract will be indefeasible like the binding contract. For example, when someone sells a house to another, while conditioning that the seller will be an agent to the purchaser for two years to collect the products of his lands and, after determining their price, to transfer as much as the price of the house to himself. The dependency of the two obligations on each other is such that one of them is placed as a condition in the other obligation, otherwise, if it is obliged prior to or after the conclusion of the contract, each of the two obligations is independent, and no one will depend on the other. The insertion of the condition into the contract does not only create a relationship and dependency between the secondary and the main obligations, but also gives the secondary obligation the meaning of a subject of partial subject of the main obligation and will be in favor of one of the parties, even though it is for a third party. For example, whenever someone sells their house to another one for hundred thousand rials while conditioning that the seller's house furniture remains with the purchaser in the basement of the sold house for one year as a deposit, the mentioned condition is in favor of the seller and establishes an obligation for the purchaser to protect the mentioned property for up to one year. Conversely, if it is conditioned that the seller repairs and delivers the house, the condition is in favor of the purchaser and the seller will commit to carry out the necessary repairs. Furthermore, when it is conditioned in the sale of a house that the purchaser gives one rial per month to the son of the seller for a period of two years, although this condition is in favor of a third party, it is analytically considered as a part of the price and it is in fact in favor of the seller. As long as a condition could be stated in the contract, a number of conditions may be put such that all of them are in favor of one of the parties or some of them are in favor of one party and others in favor of the other party (Imami, 1993, 267- 280: 2).

In the following we review the conditions in the settlement contract from the point of view of jurists and sometimes legists:

First paragraph: Condition of suspended action

One of the conditions that can be mentioned into a settlement contract is the condition of an action, and since settlement can sometimes be considered as a sale matter and can be both with and without consideration, two fundamental questions arise:

First: Would mentioning the condition of an action into the settlement contract cause settlement to be with consideration, and in other words, could performing or neglecting an action be placed as the consideration of the transaction?

Secondly: If the condition is void and corrupt, what will be the state of the settlement contract? To answer the above questions, let's have an example and analyze it.

For example, if Mr. Jamshid transfers the entirety of his apartment to Mr. Mahmoud by a settlement contract while conditioning in the contract that the grantor during his lifetime has the right to terminate the contract and also conditioning that if he waives the right to terminate or dies prior to the termination of the contract, then the grantee shall buy a place to bury him in the ... tomb of Qom, pay the expenses of his washing, shrouding, burial and charities, hire a reliable person to perform his obligatory prayers of daily Rak'at, and pay his financial obligations, such as zakat and khums of his property up to The question now is whether the contract and condition are correct? If the mentioned settlement contract is voluntary settlement with unequal consideration, it is transferrable and its correctness cannot be doubted, because the conditions nullify the contract in two cases only: Conditions which are contrary to the requirements of a contract or conditions which are unknown and of which lack of knowledge entails ignorance of the consideration (Article 233 of the Civil Code). However, the condition under discussion is not an instance of the no effect and nullifying conditions, and the contract is therefore correct. Now that the stated conditions are not nullifying, one must see whether they are instances of the no effect conditions that do not nullify the contract (provisions of Article 232 of the Civil Code) or not? Article 232 of the Civil Code includes the following conditions: Conditions which are impossible to fulfill, useless and unprofitable, and illegal. Each of the above-mentioned obligations stated in the contract as a condition is possible to fulfill, useful and profitable, and remaining. One of the obligations of the grantee is the obligation to buy a place to bury the grantor, which is something that can also be done before the death, so the grantor can waive his right to terminate and ask the grantee to buy a place for his burial in the desired tomb, and if he does not waive the right to terminate and awaits death, this obligation as well as other obligations are related to death and will be contractual and dispositional will. Suspension until death is one of the inherent properties of will. Among the contracts and agreements, this is only a will, which is written for the time after the death, and this is a very important fact that should be considered as an essential element of the will against other legal possessions during the lifetime (Katouzian, 2008, 67).

On this basis, it may be argued that the stated condition actually implies the effect of legal practice of appointment by will and it is a corollary condition, and the obligation is not one of the acts whose conclusion is due to a particular reason, therefore the condition is correct. In this claim, the purchase of a grave, washing, shrouding, burial and performing religious duties are things that the grantor has transferred to the grantee after his death, and in fact the grantee is his testamentary executor according to the condition in the settlement contract. It should be noted that the legislature has determined the scope of testamentary execution in Article 1188 of the Civil Code and Article 82, paragraph 2, of the Civil Code and the scope of the administration of estate in Article 246 of the Probate Code. Although it is not possible to limit the scope of the testamentary execution to these cases, but numerous examples determine the type of actions that can be considered as testamentary execution. After the death, whatever testamentary executor performs is related either to the property of the testator upon dying (one-third) or to the affairs of guardianship and the administration of the property of minors. So if someone says that after my death, by one third of my property purchase a grave for me, hire a person for my prayers, shroud and bury me, this is a will and can be included in a contract as a corollary condition with the contract, and the condition is correct. However, if he says after my death, by your own property purchase a grave for me, by your own property hire a person for my prayers, and by your own property pay the cost of my shrouding and burial, this is not a will, but it is a suspension until after the death of the grantor that is a responsibility for the grantee, and since no legal form other than will can withstand the obligations related to death, then stating such a condition in settlement contract is not correct, because the condition is illegal and contrary to law, and therefore only the condition is void without nullifying the settlement contract. The question now is what should be done so that the parties achieve their purpose? Settlement contract should not be optionally concluded so that it is not subject to Article 33 of the Registration Law. The grantor, instead of the option of waiving the right for their lifetime, can state his purpose as a corollary condition, determine a certain amount as settlement consideration for the settlement subject such that this amount remain with the grantee as a passive debt until the death of the grantor, and condition that the grantee is the testamentary executor of the grantor after his death to perform the mentioned duties using that debt. In this case, in fact, the legal action of the will is stated as a corollary condition in the settlement contract (Mostageran, 2013, 41).

According to Article 760 of the Civil Code: "A settlement is an irrevocable contract, even though it takes the place of revocable contracts; and it does not lose validity except in circumstances of cancellation through the exercise of an option or mutual consent." In settlement, as in other irrevocable contracts, any option can exist other than the options defined to sales, as Article 456 of the Civil Code states: "Every species of option can exist in all binding transactions, except the option of meeting, of animals, and of delayed payment, which are confined to sales." The Civil Code in the section on settlement only mentioned trickery in Article 764 that states: "Trickery in a settlement is a justification for an option of cancellation." The purpose of the Civil Code in mentioning the trickery option is not excluding other options in settlement, but the law mentioned the trickery option that occurs much more because the compromisers use settlement contract

instead of other types of contracts to conceal the truth and represent the opposite of it. Otherwise, any of the common options such as the option of defect, the option in sales unfulfilled in part, the option of non-compliance with condition, the stipulation of an option, the option of lesion, the option of inspection, the option of incorrect description and the option for insolvency occurs in settlement contract and has the same conditions, rules and effects that are stated in the options. The Civil Code excludes the settlement that arise from a dispute and settlement based on clemency from the above rule and states in Article 761 of the Civil Code: “A settlement which arises from a dispute or is based on clemency is final as far as the two parties are concerned, and neither of them can cancel it, even if there be a claim of gross loss except in a case of non-compliance with a condition, or when an option of cancellation has been included as a condition.” because settlement that arises from a dispute is for settling the dispute, and a settlement based on clemency that is sometimes used in place of gift is not actually a commercial transaction so that the options used to regulate the rights of traders in trading are not applied to it. The cancellation of the settlement contract by the option of non-compliance with a condition results from the non-compliance with the conditions stated in the settlement contract, and also the cancellation as a result of the inclusion of a cancellation option in the contract is intended purpose of the compromisers during the conclusion of contract and is outside of the options that the law has posed to adjust the consideration in the exchange.

Second paragraph: The cancellation option

In any settlement contract, the cancellation option can be established in favor of one or both parties, or third party (Mirza-e Qomi, 1303, 268). The following points should be considered regarding this condition:

- a. It is sometimes written in the settlement document that the owner of the option must cancel the contract directly and in his own language. This condition arises as the right for the person who owns the option, and this option will not be transferred to their heirs in the event of their death before the expiry of the option.
- b. It is sometimes conditioned in settlement made for consideration that the grantee has the option to cancel the settlement contract for consideration without losing the consideration. In fact, after the settlement is canceled, it becomes a settlement without consideration. This condition is correct because exchange and interchange are not elements of the settlement contract, and the settlement without consideration is also correct (Article 757 of the Civil Code). So there is no problem with this condition (Jafari Langroudi, 2009, 245).
- c. The condition of the lifetime option (and the condition of long-term option) is common in settlement contract, such that the grantor conditions the option of their lifetime or conditions the option for fifty years, so that if he/she dies before fifty years, the right of the options will not transferred to the heirs. Is this condition type correct? The source of the problem is that, according to Article 760 of the Civil Code, settlement is an irrevocable contract, and the wisdom of irrevocability in irrevocable contracts is establishing assurance and stability in transactions and determining the duties of the contractors in a definite way

such that each of them be able to make decision concerning the property earned by the contract and has their economic activity based on this. It is obvious that lifetime option is not compatible with this goal.

In the answer it must be said that in order to achieve the desired objective, the legislature has prescribed other contracts, such as sale, so that anyone who wants acts upon that. Settlement is a peaceful contract, and the settlement contract respects the free will as high as possible to achieve the types of goals and human desires. For this reason, the lifetime or long-term option is void in the contract of sale, not in settlement contract (Jafari Langroudi, 2009, 246). Concerning the lifetime option of condition (as the option of period) in settlement and sale contracts, the viewpoint of legists and the Civil Code is to express that: One of the cases faced by colleagues in arranging the documents of conditional sale is the request of contractors on the existence of a lifetime option of condition for the seller, and the question is whether we must consider lifetime as uncertain condition or not? Article 399 of the Civil Code: It is possible that the sale may be concluded subject to the condition that either the seller, or the purchaser, or both of them, or some other person, should have the right of canceling the transaction within a specified period. Article 401 of the Civil Code: If no period be specified for the option of condition, both the option of condition and the sale are null and void. The result of these two articles is that the determination of the option of condition is necessary and the absence of it causes nullity. Concerning the lifetime condition, there are the following viewpoints:

1. Late Dr. Imami: The condition of lifetime of the seller, because its end date (death time of the seller) is unknown, is uncertain condition (Which leads to the nullity of the second clause of Article 233 of the Civil Code), but it is noteworthy that he accepted the permanent condition (permanent option) and states: This period seems to be definite, and it is all times and period whose beginning is the time of conclusion of the contract (Imami, 1993, 258).
2. Dr. Katouzian: No explicit viewpoint by the doctor referring to the lifetime period is seen in his writings. But while considering the nullity of the contract due to uncertain condition by the law, he says about the permanent option: Permanent option with the assumption that it is an option of condition and the two parties do not speak about its period, is perfectly similar because in any case, the beginning of the period is the time of conclusion of the contract and the end of both is unknown (that is, he also considers the permanent condition as unknown condition) (Katouzian, 2008, 67).
3. Dr Mohammad Boroujerdi Abdeh: ... If they condition that as long as they are alive or as long as they wish, then the condition also cancels and nullifies the transaction (Boroujerdi Abdeh, 2001, 309).
4. Dr. Jafari Langroudi: Lifetime option is an accidental option on binding contracts. Mostly, people's needs require short-term option so that the contract is immune from shakiness. Concerning settlement contract that is generally based on clemency, he pointed to a point that is worth considering "... However, in the settlement contract, the lifetime option is sometimes compatible with the interests of the contractors..." which seems to me that this theory is also valid in the sale contract for settlement. Article 463 of the Civil Code: "If, in

a conditional sale, it becomes apparent that the intention of the seller was in reality not a sale, the rules of sales will not be applied to it.” Dr. Katouzian does not accept the role of clemency in this regard according to the last part of Article 761 of the Civil Code, where he has not accepted clemency in violation of the condition and option. The result of the discussion is that the above articles merely express the views of the great professors, with the result that the condition with uncertain period would invalidate both the condition and the contract, but there is a difference in the viewpoints over the lifetime condition in contracts based on clemency, whether it should be considered uncertain or not? In view of the fact that clemency contracts are very common in notary offices (especially in the transactions between woman and husband or between parents and children), where the father of the family, due to fears from the abuse of the children and the potential risks he has in mind while transferring his property to his child or spouse..., requests the lifetime option of condition, so accepting the theory of Dr. Langroudi can perfectly match the requirements of time and social reality and be considered.

In the lifetime settlement document (grantor’s usufruct for their lifetime), the condition “the grantee does not have the right to sell the settlement subject for 20 years for example” (condition of action), if the grantor died after five years, what would the result of this condition be?

1. Should the grantee be obliged to the condition for 20 years?
2. Will the condition be cancelled after the death of the owner of the condition?
3. Can the heir require the commitment to the condition from the grantee after the death of the owner of the condition?
4. Will this benefit of the condition be transferred to the heir after their death, like all other financial rights?
5. Is the existence of this condition related to that the owner of the condition be alive?
6. If this condition of the grantor’s lifetime is taken into consideration, is it considered to be of no effect and nullify the contract due to its uncertain period? (Article 233, paragraph 2)
7. Does lifetime be supposed a certain period?

The legists’ views are as follows:

1. Yes. Because the definitive document is an offer and acceptance one, and the condition included in it is accepted by both parties, then the condition must be observed. So, it is performed according to the condition that remains in force, but if they sells it, its transaction is of no effect and should be subject to the permission of the heir.
2. Only the condition of benefit lien for the lifetime of the grantor that is related to them is void, and the benefits, like the object itself, shall proceed while the remaining conditions remain in force (Of course, under the condition of lien for twenty years!), because, in accordance with Article 231 of the Civil Code, transactions and contracts are binding on the two parties concerned or their legal substitutes, and this condition is not substituted for the grantor themselves, so it is not void.

3. Principally, it does not need the will of the heir. If the condition is stated in the settlement document that remains in force, then writing the document and performing the sale is allowed after twenty years. Therefore, it is not necessary to demand the heir to commit to the condition, but if the grantee makes a transaction, it is ineffective and its effect is subject to the permission of the heir, as inferred from Article 454 of the Civil Code.
4. Yes, according to what is said above, it comes to the heirs.
5. No, since it is not related to the person of the owner of the condition, so it is not related to their life either.
6. In answer to question 6, it must be said that it is not nullifying because: (1) Paragraph 2 of Article 233 is totally brief in this respect and is not referable, because we have a clearer article in this case. (2) According to Article 41 of the Civil Code, the definition of life is: A Life - Right is a right of exploitation which has been established by means of a contract entered into by the owner in favor of someone, either for his own lifetime or for the lifetime of the user or for that of a third party. Therefore, if the condition of lifetime was for the grantor, it would be null and nullifying the contract due to ignorance on the condition that it would lead to ignorance on the consideration.
7. As for Question 7: Yes, the lifetime is assumed to be a certain period. The legislature's intention of the certain period in this regard is not the extent of life of the grantor, and the death time of the grantor is completely clear from the medical point of view. The nullifying condition is that there is no agreement about its occurrence. For example, if it was conditioned that as long as the grantor is young ... while we know that the occurrence of death is when brain death occurs, but we do not have an agreement on youth and aging. Such a condition is unknown and nullifying, and the first is known and the authenticity of the contract is intact ... In response to the above argument and answer, it should be stated that the most obvious examples in our jurisprudence for unknown condition whose lack of knowledge entails ignorance of the consideration is the option of condition with no period or with uncertain period. Because the period of the condition is evaluated together with the exchange or consideration, so if the period is uncertain, the exchange or consideration will be unknown. Therefore, by stipulating of Article 401, such a condition is null and nullifying. What is said about life is an exception and has no connection with the discussion of condition, where it is merely about usufruct. In the meanwhile, lifetime is not assumed to be at all certain because when, for example, the option of condition is put as lifetime, it is no doubt that it is uncertain because it is unknown. For example how long the lifetime of the owner of the condition will be, and this is a clear example of Article 401 and will be unknown condition. So, for example, if someone sells a house to you and tells you that they will have the right to terminate the contract for their lifetime, it will not be reasonable to buy it because you have to own it for a certain period of time and be in a stable ownership of it. In the discussed example also, if they said that during my lifetime, you will not have the right to sell, the uncertain period will make the purchaser in abeyance, and the

purchased property will be valued according to the specified period of the condition (Mostageran, 2013, 43).

Third Paragraph: The condition including testamentary

Someone may transfer some property to another by settlement and put a condition in the settlement contract that the grantee performs certain acts after the death of the grantor. Contractual will is applied to this duty that the grantee accepts according to the condition (the end of Article 826 of the Civil Code). For this reason, this condition can be called “a condition including testamentary”, but the will aspect is clearer and more obvious in such cases. Some jurists consider this case as a will, and others have opposite opinion, but the Civil Code is silent about this. The question, Zaynab had a settlement with Reza on multiple real estates for 3 kilograms of wheat and a hundred dinars cash, but did not allow Reza to exploit the real estates and conditioned in the contract that Reza should perform some testaments... After a while, Reza died and Zaynab sold her house, which was included in the abovementioned real estates, to Hassan, after that Zaynab also died, and now the heirs of Reza state that the house belongs to them. In the answer, it must be stated that the appearance is that settlement is correct in this case, and the lack of handing over is not harmful; however, since the testaments were not fulfilled because of the death of Reza before Zeinab, then Zeinab has the authority to cancel the settlement ... (Mirza-e Qomi, 1924, 202). This option is an option of unfulfilled condition, which is foreseen in Article 761 of the Civil Code.

Fourth Paragraph: Condition of endowment

Someone may grant a property to another and condition in the settlement that the grantee is committed to endow that property after the conclusion of the contract. This is a condition of action whose non-fulfillment causes the emergence of an option of unfulfilled condition.

Fifth Paragraph: The condition of not utilizing the consideration

If anyone grants a house or other estate with the condition that its benefits are not granted for the lifetime and belong to the grantor or a third party, then there is no problem with the correctness of this settlement. However, if the grantee dies earlier, the benefits for the remainder of the life of the grantor may exceed one-third of the heirloom of the dead (Ashrafi, 2006, 325).

Sixth Paragraph: The condition of sharing for non-existent person

Whenever the grantor who grants a property puts a condition in the settlement contract for his children that if there is a child for me after the conclusion of the settlement contract, that child shall have a share in the settlement subject, then in our opinion, there is no problem whenever it comes to clemency settlement. It seems that those who consider this condition invalid have no convincing reason. Furthermore, the settlement with the condition of sharing the settlement subject with the result of pregnancy, such that the father grants his house and properties to his four children and makes a condition that if the existing pregnancy delivers a boy, then that boy has also a share in the settlement subject (Mirza-e Qomi, 1924, 265).

Seventh Paragraph: The condition for the benefit of the owner of descendants

Whenever someone grants all his property to his two children with the condition that for a period of thirty years, if one of them does not have descendants, then he commits to grant his share to the other who has descendants, then this settlement is correct (Mirza-e Qomi, 1924, 223).

Eighth Paragraph: The condition related to termination

The grantor grants a property to another and puts an option of condition for himself, and conditions in the settlement contract that whenever he terminates the settlement contract, he will spend on a certain amount of charity. Is this condition, whose actuality emerges from terminating the settlement contract, correct? A condition is secondary obligation and is eliminated by the elimination of the main obligation. So how can this condition remain in existence with the elimination of the settlement contract (which is the main obligation)? The jurists have also had problems with the correctness of this condition. It seems that this condition is correct and turns up into a separate binding one-side obligation from the date of the termination of settlement (Jafari Langroudi, 2009, 248).

Ninth Paragraph: Condition of alimony

In a settlement contract it is possible that the grantee pays an alimony for the other party to the settlement or to a third party (Article 768 onwards of the Civil Code). This condition is correct.

Tenth Paragraph: A condition contrary to inheritance rules

A person grants his property for his children and puts a condition that with the death of each of the grantees, his share of the settlement subject will be transferred to the others. This condition is invalid due to contrary to inheritance rules (Ashrafi, 2006, 311). The Civil Code did not discuss life settlement or settlement conditioned for life. It is only mentioned in Article 122 of the Direct Taxation Act and the Law on Amendments approved on 16/2/2002, which states: “In the case of settlement of a property, whose benefits shall be granted for life or for a specific period on the grantor or some third party, the value of the property in question, assessed on the basis of the aggregate value of the property itself and the benefit on the date, shall be the basis of tax liability for the grantee on the above date.” However, the abovementioned article is similar to Article 41 of the Civil Code that states: “A Life - Right is a right of exploitation which has been established by means of a contract entered into by the owner in favor of someone, either for his own lifetime or for the lifetime of the user or for that of a third party.” However, it must be known that the right of exploitation in Article 40 is different from the ownership of benefits in Article 466 of the Civil Code. The right to exploitation is close to the ownership of benefits that the hirer obtains, but it is different from it. Therefore, some legists are asking questions about whether the grantor can grant the settlement subject without benefits and have the benefits for himself and whether such a contract is correct (Katouzian, 2009, 52).

- A. Is it possible to transfer a property to another without benefit, and is this condition not contrary to the requirements of the contract falling within the scope of paragraph 1 of Article 233 of the Civil Code which nullifies the contract?

However it must be said that the property and the benefits are two separate things, as in the hire contract the owner of the property holds the ownership for himself and only grants benefits to the other for a certain period and can grant the hired property to another during the hire while maintaining the rights of the hirer. The converse can also be applied, that is, the owner keeps the benefits for himself for a period of time according to the conditions of the contract and transfers the property to another.

- B. Does keeping the lifetime benefits for the grantor, whose long of life is not known and certain, is subject to paragraph 2 of Article 233 of the Civil Code, and nullifies the contract? It should be said that the value of the return is not worthy with respect to the settlement subject in voluntary settlement, and the intention of the parties is benefaction. And the unknown condition (subject of the abovementioned paragraph) is a condition whose effect is the ignorance of the consideration that nullifies the contract. Although the life span of individuals is completely unknown, but the ignorance of consideration for the parties in this type of contracts is no reason to nullify the contract, and individuals conclude such a contract lying on the principle of free will, which is one of the accepted principles. And it seems that the ignorance of it does not nullify the contract. In voluntary settlement also, the parties significantly determine the value of the consideration with the intention of benefaction, where this settlement is called benefaction contract (or composition contract) and also clemency settlement, and it is not necessary that the settlement subject be certain and known, therefore ignorance of the lifetime period does not nullify the contract (Torbaty, 2003, 22; quoted by Katouzian, 2014, 85). Another issue that has been studied as a problematic issue by some legists is while the life span is unknown and its condition is also unknown, if the grantor keeps the benefits for himself in the settlement contract, then after his death, who should give the benefits to the grantee, and will this be transferred to the heirs? It seems that this concept is the source of the problem. Ownership of benefits and the right of exploitation of the property are for the owner, and granting them to others is made by the contract where the parties to the contract have the right to place any condition between them other than the provisions of Articles 232 and 233 of the Civil Code, and also notaries, in accordance with Article 30 of the Notaries Act, “are obliged to arrange and register the documents of the clients unless the provisions of the document are contrary to the laws, regulations and the public order or good behavior...” , and if stated that the conditions set forth in the settlement document are not contrary to the laws, regulations and public order or good behavior and there is no reason to refuse to arrange and register these documents. Furthermore, when the benefits of the settlement subject are conditioned as lifetime for the grantor in the contract, which are in fact for them, the intention of the parties is to fulfill the settlement contract, but the benefits of the settlement subject are available to the grantor for their lifetime, and after the death of the grantor, the benefits follow the settlement subject itself and will not be transmitted to their heirs, even if the stewardship clause for benefiting from the benefits of the settlement subject was not included in the contract. The grantor can grant the benefits until their lifetime to another person. However,

after their death, the benefits as long as the subject itself will be a propriety of the grantee, since the grantor does not have any right in the benefits (Ridvankhah Gol Sefidi, 2012, 108).

Second Subject: The role of notary offices in arranging settlement contract

First Speech: The scope of the authority of notary offices in the arrangement of settlement contract

One of the most important principles in the arrangement of documents is the principle of “arranging a document”, which we will study. In accordance with Article 30 of the Notaries Act, notaries are obliged to arrange and register the documents of the clients unless the provisions of the document are contrary to the laws, regulations, the public order and good behavior, in which case they should inform the applicant in writing with the reason for the refusal. Accordingly, Article 52 of the Notaries Act of 1937 also states that notaries and their assistants do not have the right to refrain from arranging and registering a document unless the provisions of the document or its registration are contrary to laws and good behavior. However, in the Notaries Act, public order must also be considered as one of the important issues in the arrangement of documents and added to the mentioned list. Therefore, the documents that are contrary to the laws, the public order and good behavior cannot be arranged and registered. The last point is that the subject of contradiction relates only to the provisions of the document and does not include other subjects. In other words, the nature of the provisions of the document or transaction that the arranged document implies should not be contrary to the laws, regulations and public order or good behavior. However, good behavior and public order are words that do not have explicit and clear meaning and are not defined in the existing laws. Hence, different interpretations of public order and good behavior are possible, and this can raise many problems and issues for notary offices and notaries exposing them to disciplinary and public prosecution. Therefore, it seems that by modifying this article or adding a provision, a clear definition of those words should be provided so that the possibility of error or misuse of existing ambiguity is eliminated. Therefore, according to what has been stated, all notary offices are obligated to arrange and register any type of settlement documents that the applicant wants to arrange and register, unless such settlement, by its nature, is explicitly contrary to the laws, good behavior or the public order (Abbasi Dakani, 2009, 185).

The question that arises here is whether settlement document is credible without being registered in notary office? Or is it is legal and operational without being registered in notary office?

Furthermore, Will the tax on inheritance be abolished after arranging the settlement document and signing it by the grantor and grantees?

In the answer to the question, it should be stated that the settlement contract or document is referred to in the juridical and legal terms as “Umm al-Oquod” or the mother of the contracts. That is, things that should be maintained in other aleatory contracts can be neglected in settlement contract.

According to Article 10 of the Civil Code, all contracts concluded shall be binding, providing they are not contrary to the explicit provisions of a law or good behavior. And the settlement contract is no exception to this regulation. Settlement contract that has been normally concluded without referring to the notary office is valid, binding and enforceable, despite the fact that Articles 47 and 48 of the Registration Law have stipulated and the settlement contract has been entered into the group of solemn contracts, which implies that in areas where registry offices and notary offices exist, settlement document, partnership document and gift document must be registered and, if not registered, will not be accepted in any of the departments and courts. Because in the case of non-fulfillment of the obligation by the committed party against the normal settlement contract, their obligation can be requested from the court based on the fulfillment of the obligation. And according to Article 754 of the Civil Code, every settlement is effective, except that which relates to an unlawful matter. Concerning the second question, it should be stated if the intention of the contract is lifetime settlement and if it was officially arranged, then there is no need to pay inheritance taxes after the death of the grantor, where the taxes of transfer are paid at the same time of concluding the life settlement contract in the notary office (Nasiri, 2009, 96).

The next question is that when a person grants the ownership of his gas station for his son, and this settlement document has been registered in the notary office with this content

Grantor Mr., son of and

Grantee Mr., son of and

The subjects of settlement include all true, real, possession, hypothetical, and probable rights, and items of the grantor in relation to the ownership share arising from the letter number ... dated ... district and the head of the municipality ... regarding the gas station with registration plaque ... the main part ... Fars located in the address ..., where the grantee is fully aware of the quantity and quality of the subject of settlement and confesses to its delivery, in such a way that thereafter no one of the said rights of the subject of settlement remains for the grantor and all those rights of the subject of settlement belong to the grantee, and the grantee has confessed to seized them. The compromised consideration is 500 million Rials of legal tender, all of which is delivered to the grantor. The extinction of all operative options of termination by the two parties has been done. By being informed with the provisions of the directive 10/130 dated 3/4/1979 of the Deed Registration Organization, the grantor carried out the settlement process, and the grantor, by a separate binding contract, deprived himself from the right to terminate the contract. The grantor assumed responsibility for any corrupt in the subject of settlement, while the parties to this contract assumed responsibility for any possible debt, taxes and so on, and they were responsible for identifying each other. This document was arranged based on the certificate of no fault of the number ... dated ... municipality ..., the letter number ... dated ... and letter ... dated ... of tax affairs of Then, in a notarized agreement, he granted the station, where this contract has granted the gas station in addition to granting the franchise of the station, four neighboring shop and guest house. However, the grantee did not register the station, and at the moment the grantor, who is his

father, died and one of the heirs complained, and since the station has not been registered and the fee has not been transferred, the oil company has seized the fee for nearly one year. So:

Can the heirs terminate the settlement contract? Or not to give permission to change the fee?

Shall the inheritance tax or any other tax be paid on this property?

If the grantee could not convince other heirs to sign so that he can register the station for himself, can he do this through the court?

In the answer, it should be stated that the mentioned settlement agreement is correct and definitive, the lack of arranging the document by the grantor does not eliminate the rights of the grantee, and the heirs do not have the right to terminate the contract in following of their intestate who deprived himself from the right to terminate the contract. The inheritance tax is not granted due to granting the station to one of the heirs who is in life, and the grantee, by referring to the judicial court, can prove his right in the mentioned station, and in the absence of any one of the heirs, the court will represent him to transfer the property to the grantee. In addition, after performing the legal steps, for transferring the deed (through the agreement of all heirs or through a legal order from the judicial court in the event of disagreement), he can receive all his rights from third parties, including the oil company. (Mansouri, 2014, 47). Concerning the ability to prove the settlement in notary, it should be stated that proving the settlement can also be done in the court or notary offices according to Article 180 of the Civil Procedure Code. Proving the settlement can also be done outside the court, and the compromise document will be informal. It should be noted that according to Article 183 of the Civil Procedure Code, when the compromise is done outside the court and the compromise agreement is informal, the parties must be present at the court and admit its correctness. The admission of the parties is written in the proceedings of the session and signed by the court judges and the parties. In the case of absence of the parties at the court without a reasonable excuse, the court will continue the proceedings, regardless of the contents of the compromise agreement. Furthermore, if the compromise is done at the notary office, the court declares the termination of the matter, and if the subject of compromise is transferring or deprivation of the right in immovable property, then registering such a document in the notary office is binding according to Articles 47 and 48 of the Law on Registration of Deeds and Real Estate. Therefore, a settlement contract can be a substitute for transactions. If the settlement agreement on immovable property such as real estate is not registered in notary office, it will not be accepted in any of the courts and departments. Finally, without considering the abusive practices, it should be said that since settlement contract is called the mother of contracts, it will be very efficient and open and can be a replacement of transactions. Concerning the validity of settlement agreement, it should be stated that a settlement agreement is invoked if its authenticity and validity is certain. Therefore, the authenticity of the settlement must first be examined in the court, and if it has been forged, those who are engaged in forgery are sentenced to forgery (Mostageran, 2013, 31).

Someone granted a property for life to his son with conserving the right to terminate the contract, and later he registered the same property in the name of someone else. Should the first settlement agreement be nullified first and then the property be registered in the name of someone else?

If the property is granted by the father to his son, this will be regarded as a property of his son and he cannot grant it again to another person.

Person A has a settlement agreement in which his father, at the time of his second marriage, grants a part of his property to the first brother and the sons of the first woman (the mother's name (of person A is also stated) and also states that they do not have the right to sell to others. However, their father sold the property by a transaction without their knowledge and at the time of their infancy, the age of the older brother (first) was 17 years and seven days. This subject was presented to the court in a petition, but the outcome of the court's judgment was in favor of the defendants, claiming that, because the sons were minor children, the father was considered a natural guardian and had the right to possess the property. The lawsuit continued and the petition is presented in the appeal court by providing the necessary documents. Given that different sentences are issued in different courts regarding the adulthood and the age of majority, as well as the one who cannot have transaction by authenticity, can he have transaction with guardianship? And will the outcome be issued to the benefit of the claimants?

It seems that due to the fact that the date of the sale of the property in the letter of promise is previous to the settlement, the letter of promise is correct and the settlement agreement will be with no effect, and the person whose letter of promise is in his name can arrange an official document (Mostageran, 2013, 32).

The final question is also whether the settlement agreement must necessarily be in the form of a notary, or it is sufficient that some people, for example, a sister and sister's child sign. Is it executable after the person's death?

If a settlement agreement is arranged in a notarial way, then there will be no possibility of denial and doubt in the future, there will be a legal executive guarantee for it, and its legal validity will also be stable after the death of the grantor.

Second Speech: How to arrange a settlement agreement in the online registration system

In the current world, the necessity of using new tools in the knowledge of registration rights has become inevitable. Electronic science and technology have provided new and effective tools for human beings, which are both accurate and consistent with the speed of current life in registering legal facts and practices. Information that is a product of electronic science and technology, while being interconnected, is always available and does not have the disadvantages associated with the transfer of offer and acceptance by post or other traditional means. In the same vein and for the past several years, it has been stipulated that the departments of registration of deeds and real estate prepare and submit the response of the inquiry of the notary offices about the registered properties through the office of detainee affairs in a computerized form containing the non-detention and item (s) of the requested property. On the other hand, although the mechanism for arrangement and

registration of documents in the notary offices has less tended to use new methods, probably due to provisions that not only stated in the old legal texts such as the Civil Code and the Registration Law but also repeated in new legal texts such as the new Civil Procedure Code approved in 2000, but now the registration of many of the official documents is done on a computer basis through the online registration system in many notary offices, and therefore, the important thing that is past from the traditional way is the registration of official documents in cyberspace (Bahrami, 2014, 186).

For example, the following documents are required for arranging a settlement document on immovable property in the notary office through the online registration system:

1. The ownership deed that is in the form of a booklet or a single paper.
2. The original deed of the previous transfer or documents proving the property ownership such as letter of division or probate of will.
3. End of work if the subject of transaction is an apartment or standing property under construction.

Note: If an apartment or standing property was constructed before the 1970, there is no need to obtain the end of work according to the note of Article 100 of the Municipal Law.

4. Property inquiry.
5. Municipal inquiry (Certificate of clearance of municipality and renovation charges).
6. Registration request sent by computer by the notary office.
7. Identity card and national card of the parties.

After completing the required documents and receiving the response of the property, municipality and registration requests, the notary can arrange a settlement contract. To do this, they must first enter the deed registration system of the country and select the type of document needed. Then, according to the registration plaque of the immovable property, they choose the registration request response from the relevant field and in the end choose the contract sample related to the settlement document from among the pre-prepared forms. In the second step, the page related to the information of the parties to the transaction (the grantor and the grantee) will show, where the notary first creates the elementary part of the document showing the parties to the contract by selecting the side then by entering the national number of the persons and their exact date of birth and matching the information with the civil status database. In the third step, the specifications of the immovable property, or the subject of settlement, are completed based on the ownership deed. At this step, a noteworthy point is the amount of shares of the intended subject of settlement, which must be specified manually and entered in the relevant field by the notary for each of the parties in addition to the transaction value of the property as announced by the property financial administration. In the final step, the pre-determined texts and legal conditions of the document are reviewed and, if necessary, changed or modified, or the conditions considered by the parties are added to them, and after paying the registration costs, the document is registered in the online registration system and an identifier is taken for it. The settlement document must be registered in

the current notary office, and the registration papers of the documents and the office must be signed by the grantor and the grantee so that the abovementioned document be fully formalized and legal.

Third Speech: The judicial responsibility of the notaries

First Paragraph: The disciplinary responsibilities of notaries and their assistants

It is stipulated at the end of Article 71 of the Notaries Act that the Registration Organization will act to disciplinarily prosecute the notary or his assistant if the invalidity of the document results from him violating the laws and regulations. Article 60 of the Registration Law stipulates that the notary shall not register any documents relating to transactions whose provisions are explicitly contrary to the statute laws of the country. Thus, the legal criterion at the time of the approval of the Registration Law concerning registering documents in the notary offices was that “the provisions of that transaction not to explicitly be contrary to the laws of the country”. However, in Article 30 of the Notaries Act, as stated above, has expanded and increased the circle and scope of this duty, and the notaries and their assistants are obliged to arrange and register the documents of the clients unless the provisions of the document are contrary to the laws, regulations and the public order or good behavior, in which case they must refuse to arrange the document and inform the applicant in writing with the reason for the refusal. Therefore, if notaries, in contravention of the provisions of this article, arrange a document or do not inform the applicant in writing with the reason for the refusal, in the event of refusal, then they are considered to be violators and will be disciplinarily prosecuted and punished. For example, if a notary arranges a settlement document in which the subject of settlement is a public property or the grantor asks the grantee to act in contrary to good behavior in return of the settlement, then the notary will be a violator, and his action will be disciplinarily punished (Musa Zadeh, 2011, 96).

Second Paragraph: The civil liability of notaries and their assistants

As stipulated in Article 22 of the Notaries Act, the notaries who commit a violation in doing their duties and, by consequence of their fault or violation to the applicable laws and regulations, a document becomes partly or entirely invalid and results in harm to the beneficiaries or transactors, in addition to prescribed punishments, they must be liable to pay damage. In other words, the invalidity of the document, if caused by dereliction of the notaries or their assistants, would also lead to civil and disciplinary liability for them. This was first considered by the legislature in Article 68 of the Registration Law and was again reaffirmed in accordance with Articles 22 and 71 of the Notaries Act. The last point is that Article 25 of the Notaries Act stipulates that claims for damages caused by derelictions of notaries and their assistants are subject to the general laws and regulations and the civil procedures and, in terms of prescription, are also subject to the prescription of civil lawsuits, and are not related to disciplinary court. These types of lawsuits are governed by the general rules of law, the civil procedures and the relevant procedure of proceedings and its legal terms (Musa Zadeh, 2011, 103).

Sanction of Official Documents

The executory force is not an effect of official document, but the law exceptionally assigns it to certain documents whose beneficiary may require the execution of their provisions without a judicial review. These documents include documents arranged in the notary office or another office that performs its duties, like the marriage office (Articles 92-93 of the Registration Law). Article 92 of the Registration Law states: “The provisions of all official documents regarding debt and other movable property are binding without the need for a judgment from the court of justice, except in the case of delivery of movable property that a third party is claiming and owning it.” Article 93 of the Registration Law states also that: “All official documents relating to the transactions of registered estates are independently binding without reference to the courts.” What is deduced from the two above articles is that official documents arranged in the notary office are only binding in the parts relating to obligations that are directly or indirectly applicable by the effect of one of the transactions, but do not have executory effect in the parts where one of the parties has not committed to do. The official document at the trial stage also has the advantages that the court is required to issue the security to the claimant, without depositing any possible damage, in accordance with paragraph 1 of Article 225 of the Civil Procedural Code. The point to be considered is if an official document has an executory force and the obligee can file an application for an executory note according to it, can he institute a lawsuit based on that in the court and claim the subject of commitment? What can be analytically said is that, since the official document has executory force, obtaining executory force again by the court is tautology and will be canceled, unless the issuance of an executory note by the registry organization is obstructed such that court hearing is required. However, in practice, the courts accept such a lawsuit and conclude that, without prohibiting by law, the refusal of hearing such lawsuits is considered a denial of justice according to Article 4 of the Civil Procedure, but it seems to be better to foresee a way to prevent the court from hearing concerning official documents in unnecessary cases in order to prevent the congestion of lawsuits in courts.

Conclusion

Concerning the condition in the contract, it should be stated that all the condition of the contract can also be considered in the conditions of the settlement contract, and the will of the parties is important in this regard, while the sanction of the violation of each of them is expressed in the Civil Code, and there is no much difference between these sanctions and the sanctions of settlement contract. Furthermore, notary offices are required to arrange settlement contracts in these offices, and if they do not register or do not make the parties understand, then they will have disciplinary, civil and criminal sanctions.

As stated earlier, the main goal of this research is to study the settlement contract from a different perspective with the Civil Code and the subject of specific contracts. It was attempted in this research to exclude repetitive frameworks and templates in the field of settlement contract, which are limited to reviewing the definitions, theories and theoretical principles of settlement, and to

study this contract from the perspective of the sciences of registration, with the practical aspect of settlement contract is more often discussed.

With the studies held and the subjects discussed during the research, it can be concluded that although the main goal of the settlement contract, as inferred from its lexical meaning, is to resolve and terminate lawsuits and disputes, but in practice and among settlement documents registered by notary offices, settlement is more likely to be used as a kind of transaction for the purpose of transferring property or benefits, and results in effects such as sale, rent, or gift, which is the reason to distinguish and differentiate the approach of law and registration science from the civil law in relation to settlement contract.

On the other hand, the settlement documents arranged in the notary offices are limited to a handful, and do not have significant diversity. That is why the notaries, when arranging such documents, encounter problems such as how to calculate the registration fee or the necessity or non-necessity of stating liability and agricultural jihad and so on in the settlement documents. Therefore, it is necessary that competent authorities provide uniform and unitary procedures and regulations and make them available to the notaries for preventing the occurrence of errors in the registered settlement documents.

Suggestions

In the settlement agreements arranged in the notary offices and in settlement contract that has been dealt with in the Civil Code, there are subjects that has not been expressed concerning the conditions in the contract. This matter has caused so many problems because it is very common. To resolve these problems and disadvantages concerning the subject of the conditions in the settlement contract, we consider the following suggestions:

The first suggestion is that the legislature explicitly stipulates legal provisions in the Civil Code, the Law on Registering Deeds and Real Estates, and the Law and Regulations of Notaries concerning the conditions in settlement contract, such that the judges discuss this subject using these stipulated legal materials in the case of occurrence of problems in this regard.

The second suggestion is that, in the settlement contract concerning inheritance or in the settlement agreement to the heir, whether for the property or the benefits, the legislature investigates the use of the option of condition up to any time for the grantor (even for long term and lifetime), the determination of the duties concerning suspended settlement, as well as the interference and function of the condition and the option of condition in aleatory settlement and clemency settlement in separate legal articles and expresses the sanction of each of them.

The third and final suggestion is that the law states the sanction of non-fulfillment of the conditions included in the contract, and the legislator assigns a separate legal article for this issue and explicitly states that if the conditions of the settlement contract are not fulfilled, the settlement agreement will be terminated, nullified and so on.

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