EVALUATING THE EFFECTS OF MISTAKE AND IGNORANCE ON USURPATION IN LEGAL CODE

AVALIAÇÃO DOS EFEITOS DO ERRO E IGNORÂNCIA NA USURPAÇÃO EM CÓDIGO LEGAL

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Abstract: *By employing and adopting the ideas of Islamic Jurists, Iranian legislators have formulated the most comprehensive concept of "usurpation" in article 308 of the civil law. For usurpation to be realized, the conditions are for the act to be forcible and by conquest. And to be considered as conquest, the judgment of the public fashion is the criterion. Thus, upon conquering others' right or property forcibly, usurpation takes place and the usurper will be subjected to civil liability till they return the usurped entity and if that cannot be done, the price of it or an alternative object of the same worth or value along with the lost interests should be paid back to the owner. In civil liability, however, it makes no difference if the conquest over another person's right or property has been done intentionally or the usurper has been ignorant and has committed the offense mistakenly. Therefore, ignorance of the usurper or their doing the act mistakenly does not exempt them from civil liability unless there are more than one offenders involved in usurpation and one of them is ignorant of the fact that they are doing usurpation in which case the final liability will be for the usurper who has been aware of the nature of the act. Thus, the present study aims at considering the effects of ignorance and mistake in the laws of Iran.*
Keywords: *Mistake. Ignorance. Usurpation. Usurper.*

Resumo: *Ao empregar e adotar as ideias dos juristas islâmicos, os legisladores iranianos formularam o conceito mais abrangente de "usurpação" no artigo 308 da lei civil. Para que a usurpação seja realizada, as condições são para que o ato seja forçado e por conquista. E para ser considerada como conquista, o julgamento da moda pública é o critério. Assim, ao conquistar o direito ou propriedade de outrem pela força, ocorre a usurpação e o usurpador ficará sujeito à responsabilidade civil até que devolva a entidade usurpada e, se isso não puder ser feito, o preço da mesma ou um objeto alternativo de mesmo valor ou valor junto com os interesses perdidos devem ser devolvidos ao proprietário. Na responsabilidade civil, no entanto, não faz diferença se a conquista do direito ou propriedade de outra pessoa foi feita intencionalmente ou o usurpador foi ignorante e cometeu o crime por engano. Portanto, o desconhecimento do usurpador ou de sua prática equivocada não o isenta de responsabilidade civil, a menos que haja mais de um infrator envolvido na usurpação e um deles desconheça o fato de estar fazendo usurpação, caso em que a responsabilidade final seja para o usurpador que está ciente da natureza do ato. Assim, o presente estudo visa considerar os efeitos da ignorância e do equívoco nas leis iranianas.*
Palavras-chave: *Erro. Ignorância. Usurpação. Usurpador.*

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Introduction

One of the frequent issues in legal texts and Islamic jurisprudence is the problem of "usurpation", because it has many consequences and references in private and penal laws and bears a constant and specific relation with certain legal entities and such other offenses as robbery and fraud. This being so, the need for studies on the legal and legislative aspects of the issue is clear to every scholar in the field of legislation.

In Iran's legal code, there a plethora of discussions in the writings of law teachers and legislators about the issue of "mistake", yet no theories or terms have been provided about the effects of mistake on legal events especially the case of usurpation. At best, they have consulted the articles 316 and 325 of the civil law in which, very briefly, there are points about the ignorance of the ignorant customer about the usurped property. Thus, the present study aims at posing and answering the question whether doing the offense mistakenly or mistake has any relevance in considering the issue of usurpation and if it has any effects on the civil or legal liability caused by it.

The concept of mistake

About mistake in legal terms, scholars have provided certain conceptions some of which are: "Mistake is a misconception and belief in the opposite of what has occurred" (Shahidi, 2001: 163). "It is an untrue perception that one has of truth" (Katozian, 1998: 284). Or else, "It is belief in something that is not the true thing" (Emami, 1998: 29). Likewise, Katozian also believes that "Mistake is a misconception of reality in one's mind and is among the mental issues" (1995: 395). Also, we have that "Mistake is a fake supposition that one may have of the real thing or object" (Shaygan, 1996: 83).

Therefore, mistake is basically an incorrect perception that one has of an issue, event of legal term and based on this untrue conception, they act the result of which will come under legal liability and if the act, thus done, has resulted in any loss or damage to other's property, the offender will be liable to pay back. It also is the case that had the offender known of the liability and consequences thereof, they might not have committed it. Thus "for mistake to be valid, there are certain conditions assigned some of which are : 1- the person has a conception, 2- their conception is not sound and true, and 3- the misconception is oppose to the real case and is a kind of ignorance toward a term or percept" (Ansari and Taheri, 2007: 288).

Kinds of mistake in terms of their consequences

Mistakes are sometimes classified based on the consequences that they have for the outcome of legal event or act.

3-1- Effectual mistake: the definition of effectual mistake as mentioned in legal documents is thus: "It is a mistake that causes an absolute or partial (lack of intrusion) abolition of a term or contract, no matter if it affects parts or the whole contract" (Jafari Langrodi, 2002: 394). Though only partially mentioned here, the effects of mistake in legal events will be considered in producing or not producing liability or the compensations that the offender shall make for the losses caused. Generally speaking, in legal acts, "legislators in civil law have divided mistake into mistake in the transaction and in the party involved, while the former type is further divided into mistake in the transacted entity and something other than that. Also, mistake in the involved parties might be for the person who has or has not been principally effective in the act" (Ghasemzadeh, 2008: 75). And some of the mistakes in legal acts are also valid in the occurrence of legal events in which sometimes the mistake effectual in non-realization of legal events will exempt one of the penal or even civil liabilities.

3-2- Ineffectual mistake are used against the effectual ones and are "Mistakes that lead to no legal effect (Jafari Langrodi, 2002: 390). In legal events in which *will* is a key condition for the realization of the event, if intention and willingness as parts of *will* are affected, the *will* would be deemed as impaired. Thus, if the mistake has no effect on *will*, it (the mistake) will be ineffectual and not important. The point to note is that the results out of the mistake and its outcome are different in legal act and events. In legal events, if the mistake has no effects on

the will, no harm is done to the event. However, what is important in legal events is the effects of mistake in the production or non-production of liability for the offender. In other words, if one unintentionally or out of mistake does an act the outcome of which is damage to another person, mistake is ineffectual and the offender is to compensate for the damages done. That is to say, mistake will not prevent the legal event of compensation to take place.

The concept of ignorance

Ignorance means "not knowing or lack of knowledge on something and double ignorance is when one knows not and does not know that they know not" (Amid, 2013: 59). As clarified by the definition, one who has no knowledge about something is ignorant. Also in his book, *Mofradat* (the Unmixed), Ragheb Isfahani has provided three meanings for ignorance which are: it is when one's mind is empty of any knowledge [about something], second it implies belief in something which opposed to the nature of that thing, and finally, doing an act on something against its true nature whether one believes rightly in doing that or not (1991: 102).

Therefore, in Persian language, ignorance has two major sorts; extensive and double ignorance. While basically, there is in the ignorance both lack of knowledge and wrong belief in truth, in both extensive and double ignorance, the basic condition is lack of knowledge and information. The difference is that in double ignorance, the ignorant person claims to know.

Elements of usurpation

About the conditions of the usurpation, it is stated that conquest and being forcible are the two necessary ones while these two conditions are the elements of it, too. In other words, for usurpation to be realized the two material and non-material (legal) conditions are to be observed:

1- The material element: this means that the offender (usurper) must gain material conquest over the right or property of another person in which case, conquest also implies that the given right or property should get out of the hand of the owner and be taken hold off by the usurper, otherwise the act of usurpation has not taken place which is clarified in article 309 of the civil law of Iran. Also, in article 308 of the civil law conquest over another one's property so as to deprive them of their rights illegally is considered usurpation. In other words, "one shall take hold of other's property materially and actually and legal conquest as selling the property of the others is not enough for the act to be considered usurpation" (Safai and Rahimi, 2011: 24). It also is the case that taking hold has a commonsensical concept had "the criterion for the conquest is the judgment of the common law" (Darabpour, 2011: 284). Of course, for the comments of the common law, there is no certain criterion (Ghsemzadeh, 2007: 193). Therefore, if, for instance, one forces the owner of a house out of it and lock the door thereof without residing in it, which means that they have not done a material conquest, it is believed for the act to be considered conquest because according to the common law, the usurper who has got the keys to a house unlawfully is held liable for the act of usurpation (Barikloo, 2008: 174).

Sometimes, conquest over and usurpation of other's right and property is illegitimate from the beginning or else, it is legitimate but later become so because the usurper refutes to give back the right or property or denies the ownership of it by the other person. And sometimes, one may take hold of the property of others because of ignorance or mistakenly in which case, it is said that as long as they are ignorant and mistaken, the seizure is apparently allowed but after gaining knowledge and overcoming the mistake, they shall give the property back to the owner" (Haerri Shah Bagh, 1997: 292). Thus, if as an example, one wears the shirt of another person mistakenly, they should give it back as soon as they gain knowledge of the rightful owner of the shirt, otherwise they are considered usurpers.

2- The non-material (legal) element: this means that the act of conquest over another person's right or property shall be through force or coercion, or else, "conquest be with malice" (Jafari Langrodi, 2002: 273). Thus, if usurper well knows that a certain property is owned by others and also knows that he/she has no permission to hold the right or property of other people, and still takes possession of it, his/ her malice will be declared and usurpation realized.

It is not, however, always necessary for force to be along with malice and there are cases where many a property is usurped forcibly but not out of malice and ill will (Darabpour, 2011: 286).

Liabilities of usurpation

If one seizes the right or property of others forcibly or without any rightful permission holds the staff of others in their hold and does usurpation, there arises a liability. In other words, soon after forcibly taking the possession of something not one's own, usurpation come about and liability along with it. And liability might be toward the owner of other usurpers.

Liability toward the owner

In case of usurpation being committed, certain terms and conditions will be realized and along with them, certain liabilities and commitments related to that liability for the usurper. Generally, there are two kinds of commandments for usurpation; one assignment and one descriptive (Emami, 1998: 361). And some others hold that "usurpation has three percepts: two assignments which are the necessity of respecting and giving back the usurped property which is valid for all sorts of usurpation. Yet, the descriptive percept is that the usurper is held liable about the material being and interests of the properties" (Haerri Shah Bagh, 1997: 298). And likewise, we have in article 311 of the civil law of Iran that if the usurped property is not lost, the usurper is assigned to give it back to the owner and regarding the emphatic points of the article, giving back the property takes precedence over other liabilities of the usurper. That is to say, as long as the exact property exists, the usurper cannot disdain to give the exact amount of being of it back to the owner. Neither can the usurper ask the owner to receive the replica of it such the price or worth of it in other stuff (Katozian, 1995: 31). Thus, this command of giving the exact property back is only when there still exists the exact amount of form of it (Hiati, 2013: 209). Of course, sometimes the exact property is available but impossible to be paid back to the owner which has been clarified in article 311 of civil law. That is, there comes about some *excuse* for giving back the property by which it is meant that the usurped property is in a state that it is impossible to take it back to the owner even in defected, damaged, mixed or impaired forms (Ghasemzadeh, 2007: 198). For example, if the usurper throws the property in a river or deep well so that it cannot be retrieved, the owner should receive some replica of it. And replica of the property "means something of the same worth or function that the usurper or one of the usurpers gives to the deprived owner as long as the owner is in loss of the interests of that property" (Barikloo, 2008: 154). Of course, it seems that the phrase "of the same worth" is improper here because it implies that "replica is just for the alternatives to the exact property while, in a contrary view, it is stated that replica is also for precious objects based on which if the usurped property is lost or vanished, even if not physically lost, it would be considered as lost and the usurper is supposed to give something of the same value to the offended party because by doing that the owner will be made up for and in such case, there is no further need for replica compensation" (Hiati, 2013: 213). On the contrary, to say that replica compensation is only for precious objects is not sound, either. In a more acceptable idea, it is believed that, regarding the historical bases of civil law, one shall disdain the surface meaning of the article 311 of this law and conclude that "the replica of the usurped property is the equal worth or price of it and should be paid to the owner as compensation" (katozian, 1995: 54).

Thus, the obligation of the usurper for paying replica compensation with the same object or something worth the same as the usurped object is for the owner of the lost property that has been deprived of it and its benefits. And when or in case the exact object or property is found and given back to the offended owner, usurper has the right to take back the replica compensation of the price that they have paid the owner. And the same right is also for the owner to exact their usurped property and give the compensation money or object to the usurper in exchange. Now "if the two, the exact property and replica, are kept by the owner, it will be deemed unlawful and condemnable" (Bahrami, A. 2015: 147). Sometimes, it is possible that more than one person act as usurpers and take hold of the property of another person in which case based on article 19, each of the usurpers and those who stand for the title, are jointly responsible for the time span of usurpation and the losses caused by it.

In the case of some more than one usurper, "the owner is allowed to demand any of

them for the usurped property and the knowledge or ignorance of them about the liability or their ill will or good intentions in usurping the theft has no effect on their joint liability thereof" (Darabpour, 2011: 291). Another supposition mentioned in article 311 of the civil law of Iran is that as long as the usurped property is lost, it is the liability of the usurper for paying back the exact equivalent of the lost property of its price will be enforced so that the owner will be compensated for. For a property to be considered lost the common law perception is consulted as the conception of loss is commonsensical (Ghasemzadeh, 2009: 177). So for enforcing the obligation of the usurper in paying the exact equivalent or the price of the lost property, one shall see if the common law considers the property as loss or not. As an example, if a piece of cloth burns, it is lost in the perception of common people. Or based on article 312 of civil law, if the lost usurped is replica, in this assumption, it still is lost (Katozian, 1995: 51).

Therefore, usurper shall make up for the loss of the owner by paying the replica or price of the lost property. In article 311 of civil law of Iran it is mentioned that only if the exact property is lost, the replica or price of it must be paid back, but it does not clarify which one is preferred or when replica and when or under what conditions, the price should be offered. In this regard, "the principle of compensation demands that if the lost property is replicable, it should be replaced by the same thing and if it is of a certain price, the usurper is obliged to pay the price because demanded by the event, the best way for compensating the loss is either price or replica so as to bring back the pre-loss condition for the offended" (Haiti, 2013: 215). It also is clarified that usurper is liable for both the exact property that is lost and its profits. And in article 320 of the civil law, we have that each of the usurpers is responsible for the time span in which the property has been withheld whether the profits out of it have been retrieved or not. Therefore, the liability of the usurper for the profits of the property is for the illegitimate conquest of it and it is permissible only when the property is not consumable to be used up. Inconsumable property is one which will not be finished upon being used like a shop that has profits even if it is usurped.

And sometimes, it is possible for a property to have more than one source of profit which, if used by the usurper, should be paid back to the owner. And if the multiple profits can be collected, all of them should be paid and if not so, the profit which is the most valuable one for the owner and helps them to be at ease, shall be retrieved (Darabpour, 2011: 297).

About the loss of the exact property and its profits, it is not necessary to see if the loss of profit is also due to the act of the usurper because the jurists have already decided that both losses are of usurper's liabilities. Thus, about the loss of the exact property or its profits, it makes no difference if they are cause by the forcible act of the usurper or a third party because in each case, based on the principle of deprivation, usurper is responsible. Because "one of the features of deprivation against the civil liability caused is that it is not necessary for the loss to be related to the act of the usurper. As long as the property is usurped the losses of it are of usurper's liability" (Katozian, 1995: 89). And sometimes, there is more than one usurper against the owner in which case, the liability is shared by them, and if, likewise, the exact property is lost, the owner is permitted to go to any of the usurpers, although liability goes for the one in whose hands the loss has occurred. About the profits of the property also, the incurred liability is shared among the usurpers, yet each of them is only responsible for the loss that has occurred in the time he/she withholds the property. And all the liabilities are to ensure the protection of the rights of the owner.

Liability of the usurper toward other usurpers

If many usurpers withhold the property of an owner, each of them is liable for the act and based on their joint liability, the owner can plead to them for the exact property or profits thereof. But in the legal relations among the usurpers, there is no any shared terms to be applicable as the shared liability is just for retrieving the lost property or profit of the owner. In fact, the relations among the usurpers are only legal for their shared liability toward the owner. That is to say, their relations are only notable in relation to the act of the owner. If the owner, based on the shared liability of the usurpers, refers to one in whose hands the loss has not happened, the consulted usurper can, after making up for the losses of the owner, go to the one usurper

in whose hand the loss of the property has occurred. But if the owner goes first to the usurper who has caused the loss, the usurper cannot shun the liability and refer the owner to the next person because as was mentioned above, based on article 318 of civil law, the final liability lies with one who has incurred the loss.

From the article 318 of the civil law it is inferred that the usurper who has not lost the usurped property, after compensating for the loss, is allowed to go to the usurper primarily responsible for the loss. And if he/she cannot find the usurper in whose hands the property has been lost, then they shall refer to other ones to lead them to the final responsible usurper. And if the lost property has had certain benefits, too, the usurpers are all liable for them, and for the benefits of the loss, each usurper is only liable for the time when they have the property at their disposal. And now if the usurper can make up for the losses incurred in this time of their withholding the property, they cannot share responsibility with other usurpers. In other words, if the owner demands the profits procured in the time when the property has been withheld by a certain usurper, the usurper has no right to rely on other usurpers for the compensation of the loss. If, however, the owner seeks to get back the whole profits procured from a single usurper, that usurper has the right to refer to other responsible parties and ask them to share the compensation. Sometimes, it may happen that the usurper has deceived another person into believing that the usurped property is his own and thus, sell it to that person in which case, based on article 323 of the civil law, the buyer is also responsible toward the owner who can directly address him (the buyer) and ask for the return of the property or, if lost, its replica or price. Yet, another legal relation is here formed between the usurper and the buyer which maintains that if the buyer is ignorant of usurpation, when demanded by the owner, he can refer to the usurper for the exact amount or price of the property. But if the buyer has known that the property has been usurped, he can only ask for the price and cannot demand any compensation, either.

Thus, it is said that "the buyer has been either ignorant or knowing of usurpation; if knowing about it; he has bought the property, when the owner comes to him and take back the exact property or its price or any lost profit thereof, he has the right to ask for the money he has paid to the usurper even if he has suffered losses greater than the worth of the property. But if ignorant of the usurpation, he has the right to ask for both the price he has paid and any losses incurred form the usurper" (Broujerdi, 2001: 147). It also may come about that the owner goes directly to the usurper to demand the exact amount and any losses incurred in which case, it naturally follows that the usurper cannot take back the return of what he has the owner from the buyer who has been ignorant of the usurped nature of the property.

In articles 323 on, the legislators have composed the terms and condition for the relationships among the usurper, owner and buyer. A survey of the terms clarified in articles 317 to 320 of the civil law can also indicate that usurpers have shared liability toward the owner for the exact property or its profits and based on these terms, it is said that shared liability in the case of usurpation has highlighted certain points about our rights. The first point is that, in our rights, regarding the legal terms of "loss", the liability finally lies with the loser of the property unless a stronger cause or case is delivered. The second point is that liability of the usurpers toward the owner for the replica or price of property is not equal. For instance, the case might come about when the second usurper usurps the property from the first one and before this is done, a defect or problem appear in that property in which case the shared liability of the first usurper is for the replica or price of the defected or impaired property and the difference in the prices of the sound usurped property and defected usurped one is to be made up for by the previous usurpers who have had the undamaged property at their disposal. And the third point is that the shared lability of each usurper for the profits of the property is lies with the hands after the usurpation not before it and in another sense, the shared liability for the benefits of the usurped property is with the usurpers to whom the owner refers.

Effects of mistake in usurpation

Legislators of Iran's civil law have clearly explicated the issue of usurper's ignorance in articles 316 and 325. We have no any terms or articles about the mistake of the usurper or

the buyer of the usurped property, though. Also, in articles 324 and 326 of the same law, the sentence on the knowledge of the buyer as opposed to ignorance is consulted in cases of usurpation. As we said above, mistake is among the sorts of double ignorance because in mistake which, unlike the absolute ignorance, the person believes to know. In fact, as in double ignorance, "in mistake the person claims to have knowledge" (Akhondi, 2011: 122).

The offender has a misconception of reality or is ignorant of what is actual truth. Accordingly, it maintained that mistake is also a kind of ignorance and the relationship between these two is that of the general and the specific meaning that every mistake is ignorance, but not all ignorance is mistake (Mohseni, 2011: 33). Now with regard to the logical relation between ignorance and mistake, the legal effect of them will be explained separately.

Effect of ignorance in usurpation

In articles 314 and 325, legislator has clarified the consequences of the ignorance of usurper and the ignorance of the buyer or customer. Also, in articles 324 and 326, we have terms and points about the knowledge of the buyer about usurped property. Thus, about the effects of ignorance in usurper and customer in buying the usurped property, discussions will follow separately below.

Effects of ignorance in usurper

Article 316 of the civil law of Iran holds that if someone usurps a usurped object or property from a usurper, he/she is responsible like the first usurper even if he/she had been ignorant of the fact the first person had been a usurper. Ignorance in of the usurper in this case is of the two kinds of double and extensive ones which means he/ she might have been ignorant of reality and the purpose (double), or they might have known of their ignorance but have had no knowledge of the nature and consequences of the offense. Then, if one steals a property from a usurper or even the owner of it, they are liable toward the owner and based on article 311 of civil law, they should give back the exact property or, if lost, its price to the owner. And based on article 315, the ignorant usurper is also responsible for any damage that may occur to the property while it is at their disposal.

Therefore, the ignorance of the usurper about any defect or damage made to the property has no effect on the civil liability of the usurper toward the owner. And there is no difference between the ignorant and knowing usurpers with respect to their liabilities. Generally, it is stated that "whenever one forcibly conquers over the property of another person, whether this conquest is done intentionally or knowingly, of even if by good intention and will, or the usurper gains any profit out of usurpation or gains no profits, they are legally liable to return the exact usurped object and make up for the lost interests caused. If the object or property is destroyed or lost, the usurper is obliged to pay the price worth of it to the owner." (Katozian, 1995: 17).

There remains the fact that sometimes, there might be some usurpers of a single property and some of them be ignorant of the usurped status of the property in which case the liability lies with only those usurpers who have been aware of the truth. Thus, if the owner of the property goes to a usurper who has not been aware of the illegality of the act or the usurped nature of the property, the ignorant usurper has the right to go to the other or previous usurper to finally find the usurper who had been knowing of the offensive nature of the seizure (Barikloo, 2009: 181).

Effects of ignorance of the customer in buying a usurped property

It may come about that upon usurping the property of another person, one keeps it in their possession or sell it another one through a legal contract. In case they sell the usurped property, it naturally follows that the buyer might be ignorant of the usurped nature of it. In article 325 of civil law of Iran, the legislator has clarified about the ignorant buyer that if the customer is ignorant of usurpation, and the owner comes to them for compensation or return of the property, the customer can also go to the seller of it for the price of the contract. It is

so even when the contract is called off between the buyer and seller. And if the owner refers to the seller for the property or its price, he has no right to go to the buyer. The right for the owner to refer to the buyer of the usurped property is based on article 323 of the civil law of Iran according to which each of the seller and customer or buyer share in the liability toward the owner who can refer to either of them. Thus, whether the customer is ignorant or knowing of the usurped nature of the property, they are liable toward the owner.

In other words, it is stated that "ill will or not having malice are not involved in the legal terms and conditions related to the owner" (Katozian, 1995: 17). Therefore, the owner is free to refer to either the usurper of the buyer of the property. Yet if upon going to the buyer, they found about the ignorance of the customer, the owner manage to take back the exact amount of the usurped property, then the buyer is righteous to refer to the seller of the usurped property and ask the money paid by the customer and all the losses made and even the costs spent in transaction, and keeping the property. They can also demand the profits deemed to be earnable during the time when the property has been kept by usurper and costs of courts and trail (if any). And in justifying the right of the buyer for going to the seller, it is stated that they have been ignorant about the usurped nature of the property and thus, not blameworthy (Safai and Rahimi, 2012: 42).

Therefore, the main effect of ignorance of the buyer in buying a usurped property is that the buyer can refer to the usurper and demand the price they have paid for the property and any other costs and losses that they might have suffered. Yet, if no money has been given to the usurper, the buyer need not do anything because the contract has been canceled and the buyer has not received any property, and the usurper is not the owner to have any claims. Another case to be considered in the case of buying usurped property is when the property is damaged or lost by the buyer, but the owner, upon finding about their property, goes directly to the usurper for the price of the lost property of theirs in which case, after paying the exact property or the price of it to the owner, the usurper has no right to refer to the ignorant buyer. Yet, if the buyer has had knowledge on the usurpation and the fact that the seller is usurper, based on article 324 of the civil law, the relation between the buyer and the usurper about what the owner has taken from them is like that of the usurper to usurper which, based on legal terms, has four aspects: first- the buyer is only allowed to refer to the usurper-seller for the price paid for the property, second- the buyer has no right to ask for any other costs than the price they have paid for the usurped property, and third- if the exact property is destroyed or lost by the buyer and the price or replica are given to the owner, the buyer has no further right for referring to the usurper because the usurped property has been lost in their hands and also, they have known of the usurped nature of the property and are considered usurper, and fourth- in case the owner refers to the usurper-seller of the property and receives the price or compensation, and in case the property is lost at the hands of the buyer, the usurper has the bright go to the buyer who has lost the property.

Effects of mistake in usurpation and usurper

About the effects of mistake in the problematic of usurpation, it is believed that mistake prevents the realization of the usurpation. Based on this general percept, some scholars and jurists have suggested that the term "forcibly" in article 308 of the civil law implies that there should be knowledge of the owner of the property, and in case there is no such knowledge on the part of usurper, or based on a mistaken perception, they believe that they can seize the property of others, this mistake prevents them from being deemed usurper and having legal liability (Darabpour, 2011: 286). Thus, if one thinks that a certain property belong to them and seizes it, but later on find out that they have made a mistake, the act is not considered usurpation (Amid Janjani, 2003: 177). Also, based on article 310 of the civil law, some jurists also propose that the terms and legal consequences of mistake are the same as those of ignorance. Therefore, if one seizes a property mistakenly or ignorantly, as long as they are mistaken and ignorant of the act, they have no legal liability unless after knowing about the usurpation, they refuse to return the property to the owner, like the case, mentioned above, when one mistakenly wears another person's. Some others believe that if someone, without knowing that

a certain property is owned by another one, withholds it, the cat is legal usurpation (Barikloo, 2009: 148). That is, if someone supposes that the property is their own, and seizes it based on that supposition, their act is considered legal usurpation and this shows that "mistake" has no effect on realization of usurpation.

Because jurists see no difference between the legal and non-legal usurpation in terms of the civil responsibility and liability. Generally speaking, the ideas and comments of the legislators and jurists about mistake seem to be legal and justifiable, while in actual practice, and based on conditions clarified in article 316 of the civil law, mistake is a kind of ignorance. Thus if one, even if mistakenly, conquers the property of others, based on the principle of deprivation, that person has civil liability and the mistake cannot bar them from being responsible. Of course, the only effect of mistake of the case of usurpation is exempting the usurper from penal liability and the consequences thereof.

Conclusion

Mistake is of and the same as ignorance; that is, one who mistakes claims to be knowing but in ignorance, the ignorant person has no knowledge whatever. About the mistake and its effects on usurpation, the legislators are silent and the fact is that about its effects on the legal entity of usurpation, there are controversies, meaning that based on the apparent content of article 308 of the civil law, mistake prevents the realization of usurpation and even some others, based on article 310 of the civil law of Iran, conclude that as in the case of ignorance, mistake has no effect on usurpation to occur. In other words, they believe in the effects of mistake in usurpation, although other scholars believe that mistake has no effects in usurpation. Therefore, if someone mistakenly seizes the property of others, they will be subject to civil liability. It seems that the stance of the second group is more to the point because based on the principle of deprivation, anyone conquering the property of others, whether the act be mistakenly or ignorantly, they will have civil liability for usurpation but mistake in doing any seizure of property does not bring any penal liability for the offender. About the effects of ignorance on usurper, one can say that ignorance has no effects of usurpation and the liability brought by usurpation is caused for the usurper. Thus, ignorance of the usurper cannot prevent them from being liable toward the owner of the property.

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