

## Contract Regulation of Time- Sharing

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### ABSTRACT

Subject of Contract Regulation of Time- Sharing is uniquely novel in Iranian Law and despite of the role which it plays in method of attracting capitals and prevention from their waste and unlike other jurisprudence- related and legal terms, this subject has been more rarely discussed. Typically, time- sharing denotes a specific method based on which some people may purchase or rent right of utilization from a property, which is been used frequently, for definite period of time. In the current article, it has been tried to investigate into legitimacy principles of "Time- Sharing" within Shiite's dynamic and sustainable jurisprudence through a detailed survey; thus, some issues have been explored in this study including origin for time- sharing emergence as well as its definition and analysis on its nature, the reasons for possible or impossible legitimacy of transient occupancy as the basis for this contract regulation and also the position of this method among nominative/ innominate contracts as well as review of them based on the Principle of Free Will and implication of their characteristics and the impacts of the given contract regulation and study of other similar methods.

**KEYWORDS:** Contract Regulation- Time Share- Scheduled- Permanent Occupancy- Transient Occupancy- Principle of Free Will- Nominative and Innominate Contracts- Legitimacy- Illegitimacy- Joint Ownership (Condominium)

### 1. INTRODUCTION

#### Interpretation of Subject

The proper and logic solution for imposing a newly established unknown legal phenomenon, which has imported into our country from other legal system, is to address it by review and inquire in the statutory law in order to clarify its correctness or invalid nature with respect to the substance and effects and the related injunctions. The scheduled time sharing of a property is defined with respect to this point that ownership for a property such as villa and dwelling unit and at the greater scale the proprietorship of an island and the like is conveyed to several persons through scheduled period so that each of them may own the given property for certain period of time and use it so and this cycle repeats every year. This method has been purposed in Iran more recently but despite of lack of any certain rule in this regard, some enterprises tended to enforce such a legal action in practice so this was followed by some ambiguities and thus wandering about even its legal nature for the most part. The present essay is intended to characterize legitimacy principles for time sharing through review of jurisprudential and judicial reasons and their critics and by adoption of a comprehensive study in order to remove legal gap in this respect.

#### Review of Time Sharing Concept

The idea for selling of athletes against huge mass of money, particularly in the field of soccer [1] has caused development practitioners to take the most feasible rational strategy toward producing huge amount of wealth to establish companies and big hotels at large scale through integrated and wide management based on time- sharing within the areas prone to attract tourists in order to relieve from traditional framework of purchase or short- and long- run lease (ibid). The impact of this method was so high on attraction of investment that it could also penetrate into computer diversified systems to the extent that the large size manufacturers of computer hardware might supply their needed expensive parts by adoption of this technique [2]. Clearly, time sharing method has been introduced in Iran when some enterprises tended to sell apartments and tourist villas weekly. These companies have used some titles like time- share, time ownership and time purchase in their ads and promotions. Upon starting the activity of this company, the subject of Time Sharing Method has been purposed in legal meetings [3], since titles of time sale and time share in Iranian Law and especially Islamic Jurisprudence was unprecedented and unknown and using some controversial and self- made titles like time sale, which were solely purposed for marketing and attraction of buyers irrespective of the nature of such contracts, might increase doubt and ambiguity surrounding this subject. In order to prevent us from improper interpretations in this essay, we should avoid from using title of "Time Sale" since we will see that denoting this concept as a kind of contract regulation is not essentially correct therefore with respect to meaning of this term, we can suggest the Persian equivalent for this term as time- sharing which lacks the restraints of time sale against its Latin word. Although it may not cover all aspects of time- share.

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Author of Black Legal Dictionary writes: "It denotes property ownership in vacation or recreation condominium property wherein rights vest in several owners to use the property for specific period" (e.g. two weeks each year) [4].

**Nature of time share is not excluded from two positions:**

1) The first assumption expresses that time sharing is another term for dividing interests in jurisprudence; namely, several owners who jointly share in a single property may divide interests of the property based on schedule among them because they could not use the property simultaneously. No specific subject exists in this assumption.

2) The second assumption is that time share is one type of ownership in which each of owners are the owner for entire object of property within certain period of year and throughout that time, object ownership is transferred to other owner and this repeats every year. In this assumption, persons are transiently owner within certain period of time and this basis is not originated from jurisprudence so it required more investigation. Given some of the existing sources, it seems that time share is a special type of ownership and its nature essentially differs from joint purchase and division of interests.

**The relationship among attribute of ownership durability and time share**

Typically, when it is talked about permanence of an issue, this means the given issue continually exists and it is immortal but regarding ownership right this means that no certain period is assumed for the given right and to the extent that the property endures, right of property is in force for the owner [5]. This sustainability characteristics results in that lack of using property may not divest owner of proprietorship right and also this right will not be excluded over time [6]. Rather than clarifying concept of ownership durability we will address this key question that whether transfer of scheduled time share or in other words binding of ownership to time is acceptable in jurisprudence and law or not?

It is surely obvious that ownership is a permanent right toward the possessed object not owner and accordingly conveyance of ownership does not contradict to the characteristic of its endurance. Personal ownership is characterized as bounded and limited to time in time- sharing and in this predicate, both parties intend to dissolve that contract at definite period of time in the future and since realization of dissolution is definitive and conclusive at certain time so after passing the given time, person's ownership will be automatically dissolved and without need to intend termination of contract or any other new cause and thus the property will be transferred to other person [7].

**The reasons concerning to illegitimacy of transient owner**

Given that it is assumed in philosophy that substances may not be bounded to time and time may not play any role in determination of substances measurement and at the same time where the original object of contract is included in substances therefore it could not be restricted or bounded to time so it cannot be implied that it belongs to this day or tomorrow; however, its benefits are included in accidents (consequences) so it may be restricted and time- bounded. For this reason, ownership of benefit, like lease, is possible transiently and limitedly but this could not be assumed by observation [8]. There is no doubt that original object is one type of substance and thus it is not time- bounded and restricted but in response to the above reason it should be mentioned that: transient occupancy means that ownership of the original object is transferred to other at certain part of time not to convey ownership of the original object, which is time- bounded, to other party; thus, for instance if someone grant the ownership of a book to other person; in fact, he/ she restricted ownership of the book to certain time not the book itself and since ownership is deemed as *QAR Affairs* (the existing object with all aspects at the same time) and although these objects are not essentially time- bounded but one could divide them into several parts at different time intervals so there is no barrier to divide ownership of original object with respect to time intervals and such division does not require restriction of object to time [9].

The second reason suggests that compensatory ownership is a single subject and this separate issue may not be reproduced, distinguished, and restricted to time because it is included in QAR Affair consequences [9]. Therefore, due to its special nature, ownership may not be essentially restricted and bounded to time but in response to this reason, it should be told that it may serve sometimes as time consequence like in QAR Affairs. Although these issues may not be instinctively measured and restricted but since it occurs within time context so it might be divided into time intervals with respect to different periods of time thus it is possible to consider a single affair within different time intervals.

According to law experts, third reason for this argument is that ownership durability and impossibility of restriction it to time is the logical outcome of indivisibility characteristic of ownership for the original object but this characteristic of ownership does not mean lack of compulsory conveyance of the given object to other individuals [10]. In addition to approve this point, and in order to give response to the above reason, it should be mentioned that it is improper to isolate indivisibility of ownership from external and physical existence of property since there is no doubt in most cases like owner's renunciation from the property, ownership right is divested of the possessed object. Furthermore, it can be exclusively concluded that ownership right is not isolated from the possessed object not because this fact that it might not be separated from owner in itself or the ownership may not be time- bounded. Thus, as transfer of ownership from someone to other may not bar its durability, this

may also apply to transient occupancy and at the same time ownership will not be cancelled after passing one year since ownership of the object for example if it has been transferred to other one in transient occupancy but it is conveyed to the next owner. Accordingly, given that we accept indivisibility characteristic of ownership of property but this claim is not admitted that cancellation of transient occupancy is the logical outcome for this attribute.

The other reason is in that according to opinion of some researchers and by adoption of rule of dominion over property, ownership possesses three characteristics including absoluteness, permanency, and exclusiveness. Sustainability of ownership means that by means of rule of dominion over property, if someone becomes owner of something then he/ she will have right to use and exploit from the given object without restriction to certain time as long as he/ she is the legal owner for the property [11]. It seems of course that permanent or transient nature of ownership has not been implied in the above rule. But this rule implicitly signifies that individuals are dominant over their properties and they have right to possess and exploit from their property in whatsoever and this concept also applies to transient occupancy. Namely, owner may possess and exploit from his/ her properties with time of ownership either as permanent or transient owner for dominance over the given properties. Thus it is not possible directly to infer ownership durability from this rule.

Among other reasons for cancellation of transient occupancy one can refer to this point that restriction of ownership to time contradicts to nature of ownership since the paramount attribute of ownership expresses that owner may destroy all his/ her properties. Acceptance of transient occupancy means that we could consider all powers of permanent owner for transient owner as well and this is reasonable or given that we accept this point so we should deem it as right of exploitation. Then transient occupancy is an irrational and improbable issue [12]. It seems this reason is the foremost and most strong reason to annul transient occupancy [10]. Regarding this cancellation reason, it can be implied that ownership and authority are two completely separate concepts to each other. In fact, authority of human over its property is the outcome and cause for its ownership but not the same as ownership or the synonymous for it. Islamic jurisprudents have unanimously referred to the limit of owner's powers and his/ her ownership causes based on rule of dominion over property that is derived from Holy Prophet's well-known axiom (*The people are dominant over their properties*) and thereby they prove any dominion and power for the owner [13]. Accordingly, one could not consider transient occupancy contradictory to nature of ownership solely because of this fact that owner may not destroy its property at certain time. There are many examples in Islamic jurisprudence including the endowed property over which the owner may not dominate perfectly but validity of ownership is also in force based on rationalists. The utmost point which could be proved due to lack of ownership causes in this regard is that in this special case, there is no absolute ownership but this is not deemed that ownership is absolutely negated [14]. It should be made known that of course lack of all ownership causes may serve as a rational reason for cancellation of ownership principle [13]. But absence of one or more causes from ownership causes does not contradict to its nature and at the same time this point should also be added that sustainability of ownership right is not included in its elements [15].

The last reason concerns with lack of history (background) for transient occupancy in Islamic Religion [12] so that of course it is not acceptable since firstly lack of history for any affair may not lead to ban and illicitness in any case although this reason may apply to some prayers which are confining, absolute acceptance of this idea is not proper in contracts area where the most part of them has been assigned to legal norm, particularly regarding such concepts like ownership that are considered as credit affaires [14].

#### **The reasons for legality of transient occupancy**

With respect to this point that ownership includes credit relationship among property and person that is validated by rational people and occurrence and survival and quality of its validity rely on origin of its validation where the holy religion of Islam does not purpose any certain comment about its concepts and exemplars and at the same time by virtue of this hint that transient nature of ownership does not contradict to essence of ownership so it can be concluded that ownership may be considered with its transient nature as the consistent ownership is validated (ibid).

The foremost reason for legitimacy of transient occupancy concerns with several cases where the Islamic jurisprudents have acknowledged transient occupancy. Some cases like endowment, particularly special endowment, which refers to proprietorship of the endowed object based on jurisprudents' public comment; BADAL-E- HEILOOLEH (i.e. equivalent for property in the case of absence) and some contracts such as lease-option- agreement and other items are several examples which show that the claimed consensus over cancellation of transient occupancy [16] is not acceptable.

#### **Jurisprudential bases for subject of Time- Sharing**

1) **Analysis on endowment as jurisprudential base for time- sharing:** The common basis regarding endowment considered by Islamic jurisprudents particularly for peculiar endowment is that the endowed object is owned as property for what was considered for the purpose of endowment but they dispute over this issue that one could endow a property for some group within certain period of time and then endow it for another group after that time. For instance, if a person endows his/ her house to public use for ten years and then for the poor, then the public ownership will be a transient occupancy and time- bounded in this endowment [14] and since endowment is a type of ownership and its nature depends on owner's will and it is generally confirmed by necessity of

fulfillment of promise and principle of authenticity and also some expert's account like "Endowment shall be enforced according to what is endowed by its owner" (HorAmeli; 2005: 2h-307-13)[17] may signify effectiveness of this type of endowment therefore it can be mentioned that transient occupancy is a rational and legal affair [16].

**2) Analysis of equivalent BADAL-E- HEILOOLEH as jurisprudential basis for time sharing:**

According to viewpoint from several Islamic Jurisprudents, equivalent (BADAL-E-HEILOOLEH) is the compensation and provision for the loss that is granted to owner of the object and its ownership is conveyed to owner but its ownership is not permanent and consistent the compensation for the loss only applies to the amount of incurrence. In the cases of BADAL-E- HEILOOLEH, the original object exists and for this reason no damage has been incurred regarding the original object while the given loss is limited to certain time so its provision is possible until the time when owner resumes his/ her authority over the original object [14]. As it found in this reasoning, transient occupancy has been realized in the case of BADAL-E- HEILOOLEH equivalent and some jurisprudents have maintained it (Ibid; 242).

**3) Analysis on lease- option- agreement as jurisprudential basis for time sharing:** They are some types of leases which are pronounced based on ownership requirement and serve as an introduction for purchase and they are validated according to type of their promise or along with the promise from a vendor party or in other words they are the lease that leads to ownership.

Such a contract is substantially justified based on Article 10 from Civil Code. According to viewpoint from some lawyers, one could track transient occupancy in such special cases of nominative contracts. Owner may reserve its ownership until payment of all installments in lease- option- agreement contracts. Ownership will be transient for the owner and ownership of purchased object shall be conveyed to buyer after some period of time that has been stipulated in the given agreement [18].

**4) Entailment:** Entailment is one of the other cases that refer to realization of transient occupancy [19] but of course this comment may not be admitted since the original object is not possessed in the case of entailment but the object remains under ownership of lien or and only right of exploitation is transferred to other party [16].

**Review of authenticity and validity of time sharing in contracts section**

With respect to analysis on concept of time sharing and among all nominative contracts, one could only refer to commutative purchase contracts, barter and loan and also compromise contract because it has wider framework than other contracts and it may serve as a frame for exchange ownership of the object so doubtlessly time sharing may not be incorporated within loan and barter contracts. Digression of bounded object that occurs in analysis of time sharing may exclude lease contract from this subject.

The high similarity of purchase contract to time sharing method may strengthen this doubt in mind that time sharing to be a type of purchase and its exemplars. So it is characterized by examining purchase nature that transfer of scheduled time sharing for object may not serve as examples for purchase and as a result another method should be found to prove its legality and eventually through looking at compromise contract one could conclude time sharing method under title of compromise contract.

The foremost attribute which distinguishes substantially purchase from time sharing is transient and scheduled nature of ownership in time sharing contract. In comparison with time and or in permanent and transient form, purchase may possess unconditional nature against durability and continuance attributes and it is frequently prevalent through the community. Alternately, purchase is an object for which time should be used to determine its amount so in this case ownership is not transient per se but it has been possessed and time- bounded [20] and it is intact according to jurisprudents' view. And under third condition in which purchase is transient namely ownership is done transiently; for example, a book that is sold to other person for one month and in this assumption, time is a purchase requirement and the origin for ownership so apparently Islamic jurisprudents have no doubt about cancellation of transient purchase based on the following reasons.

**First reason:** Lack of rationality and legality of purchase is transient and ownership is transient the effect of transient purchase and since transient occupancy is irrational and given its rationality and this illicit case in Islamic law therefore transient purchase is annulled. In response to this reasoning, it should be implied that although the common concept for purchase ownership is constant but it does not mean transient occupancy is not valid in Islam. It seems the subject of transient occupancy is rational and acceptable but legal and the best reason for this issue is its occurrence in Islamic jurisprudent as well and;

**The second reason:** is infrequency of transient purchase. Title of purchase may stand for a contract when such denotation may be normally true and the holy religion of Islam has only approved and signed and guided the object of purchase contract and expressed the comment based on normative dialogues [21]. Some of jurisprudents argue that term purchase only stands for absolute purchase namely transient form but transient purchase is not essentially the example for the current purchase [20] and despite of the existing doubt regarding purchase nature of this contract no one can resort to generalities to prove its correctness. In this regard, some of other jurisprudents believe that no certain meaning and concept is assumed for transient occupancy since house is the basis for purchase and it may transfer ownership of house to buyer forever and without restriction; therefore, this purchase and transient occupancy is not proper [8].

### **Impossible analysis on time sharing under title of purchase**

With reference to jurisprudential texts and a brief glance at norm (common law) one could find this integrated point that permanent transfer of object is considered as the necessary attributes and distinct characteristics of purchase contract and for this reason, transient conveyance of an object is not basically deemed as purchase instance. Thus, analysis of time sharing contract is improper if it is used as purchase contract then time sharing contract is typically considered as a special agreement and contract in which its terms comprise of transfer of the scheduled ownership.

### **Analysis on time sharing and compromise contract**

With respect to the extended view of jurists about independence of compromise contract and the selected comment in Iranian Civil Code, it seems there is no legal bar for transfer of the scheduled time sharing under title of compromise contract. Although this contract type leads to purchase result but by virtue of Article 758 of Civil Code, it does not contain the purchase special terms because it has been concluded as compromise contract. And reference to what was mentioned about legality reasons for transient occupancy in jurisprudence can remove our doubt subjectively regarding the authenticity of such a compromise contract and through which we could prove its authenticity by means of principle of contracts freedom and Article 10 from Civil Code.

### **Validity of innominate contracts**

To examine the legal status of time sharing contract in terms of limits and instances of valid contracts, we are required dealing with a brief discussion about the validity of innominate contracts through implication of the paramount bases of free-will principle in Islamic jurisprudence. This issue has always been purpose among Shiite jurists that whether only bilateral legal intentions are effective if they are concluded within one of the nominative contracts or any type of bilateral legal intention will be valid within each format or framework. The fact that if there should be certain letter of law to recognize contract legality and in general rational contracts are legal and valid, so many groups of Islamic jurists, especially predecessors, took the theory of exclusiveness of contractual models [21], and some of jurists have resorted to authenticity of corruption in contracts [16]. Based on consensus, some recent jurists have denied validity and necessity for observance of contracts and obligations which are not intended within nominative contracts as the primary terms [14]. On the other hand, generalities of contract like “fulfill the promises” are not absolutely common but they are bounded and limited. For example, the article “the” in this phrase is an article which in fact limits the contracts to the agreements that are concluded at time of its legislator. But review of jurisprudence reasons and rules negates this restriction in contractual relation for which the jurisprudence-related generalities and terms like this phrase (“fulfill the promises” and “the trading based on mutual agreement” ; [22] and also Islamic Tradition including the phrase “the believers based on their conditions” or “the Muslims based on their conditions” which have been deduced for this purpose, all signify the validity of any legal practice for which title of contract stands normatively since term contract or commerce and the like has not certainly religious reality.

### **Exclusion or diversity of contracts**

As it mentioned before, a group of Islamic jurists deems the decree concerning to contract fulfillment supersede to concluded treaties or prevalent at the time of their issuance so they do not consider any new contract as effective albeit it is necessary to meet public requirement of community and limit governing realm of will. Pursuant to views from the aforementioned jurists, many authors tended to limitation of contracts within certain frameworks and the anonymous agreements and practical trade-offs (in transactions by conduct) which do not make both parties to be abided by mutual agreement. In other words, they argued that obligation only forms from mutual agreement and in order to support from such mutual agreements, it is allowed, of course, that obligation to become as the condition along with concluding the contract and to be subjected to the binding transaction as a subordinate and to acquire it necessarily [23]. In contrast, those, who believed in exclusion of contracts within the precast frameworks, were not few; the jurists that deemed it obligatory the fulfillment of promises not to be against religion and ration, and ethics and they did not restrict governing domain of will to nominative contract and its terms thereof. At any case, by approval of Article 10 of Civil Code, there was no doubt that individuals' will, would govern on fate of their treaties. Finally, free will is an accepted subject in concluding of contract but with respect to special discretions and expediencies as well as inequality of power among both contract parties, domain of free will is limited in some cases.

### **The paramount bases in principle of contracts freedom**

Since the position of Civil Code and Iranian law system is clear and unambiguous versus contractual freedom principle so it does not necessitate to purpose basic discussion in this respect but it seems necessary to refer to bases of this principle in order to strengthen and enhance this subject.

### **“Fulfill the promises” (A verse from Holy Quran)**

The first verse from MAEDEH (5<sup>th</sup>) Shura of Holy Quran, which states “*Oh believers, fulfill the promises*”, is the paramount reason to which the adherents of principle of contracts freedom have resorted. According to some linguists, term promise has been absolutely purposed with the meaning of word contract [24].

But based on viewpoint from others it is not mentioned as absolute promise but reliable and emphasized term [25]. It should be noted that the main intention in this verse for word promise is not what it meant by jurists i.e. comprising of offer and acceptance, but it means the lexical and normative concept since Holy Quran utters by means of normative language. According to above- said cases, the lowest level of promise in which both parties do not emphasize and enforce it so seriously and its duration only depends on survived permission, is not included itself in this verse. It is because of this fact that the respected verse initially includes those promises which based on reliability and strength such as ownership contracts like purchase and unilateral transaction including quitance and divorce and the like. Thus, permissive contracts are specifically excluded from theme of this verse not proportionately [7]. The second issue is meaning of fulfillment of promise. With respect to Free Willer Theory in jurisprudence principles based on reality in necessity [26], the theme of this verse states that fulfillment does not oppose to law, ethics, and wisdom based on what applies normatively to title of promise and it is necessary for what was concluded according to proper basis and principles [27]. Rather than recent jurists, one could find some antecedents as well that consider it advisable to resort to generalities for proving authenticity and validity of innominate contracts [28]. This indicates that the antecedent jurists looked at principle of free will suspiciously but the contemporaries have generally tended to it and accepted this principle [29].

#### **“Trading based on mutual agreement” (Quranic verse)**

Regarding the prohibition of eating (acquiring) of property by illegal means (*Quran: Nesa sura 4:29*)[22], some of writers have deemed this verse as a cornerstone for Islamic rules concerning to transactions and exchanges and for this reason Islamic jurists refer to it in all parts of contracts since term “eating” in this verse denotes any type of possession and the phrase “*except trading by mutual agreement*” is grammatically is the discrete exclusion which in turn it serves as a general rule versus this sentence. Thus, if all financial transaction and types of prevalent trading among the people are done based on agreement with the rational and logical aspects then they are advisable based on Islamic view except for those cases in which the religion explicitly forbade them due to some certain expediencies (Ibid, 355). The effect of mutual agreement serves as the basis for this purpose [15].

#### **“The God believers should observe their conditions”**

This is an Islamic tradition that has been quoted for validity of condition and necessity of its observance, which could be an emphasis on validity of all contracts. In the aforesaid tradition, it is declared that since word “condition” has been used absolutely as meaning of treaty in some books and this denotation also includes obligation implied with the contract so it contains the purpose of verse “fulfill the promises” so it is required to meet this condition [11]. Therefore, all the contracts which have been concluded by the virtue of Article 10 of Civil Code are considered as the examples of this concept and based on which and in terms of general meaning it may grammatically serve as the annexed word to phrase “their conditions” so the validity of innominate contracts may be inferred from this concept [7].

#### **The causes and outcomes of contracts freedom**

Freedom of selecting the type of contract is one of the outcomes resulting from the principle of free-will in the agreements. The implication of Article 10 from Civil Code suggests that both parties are free to conclude the contract under whatever conditions they tend although with respect to economic and social importance, Civil Code has interpreted the rules for some contract in details but this anticipation does not mean will of both parties should be realized exclusively in this way in contrast it is vice versa since Article 10 of Civil Code was established in order to make individuals free in how to create obligation and compulsion and to establish legal relations and its social necessities for those groups of agreements which are not completely complied with nominative contracts or perfectly different from them with respect to economic advancements and complexity of those relation. As it found in title of innominate contracts, no certain rule and regulation has been enacted regarding contract terms by legislator therefore both parties may agree mutually as they wish and to implement it but public order and good behavior is exception to this rule in subject of agreement between individuals [30].

#### **The status of time sharing contract in terms of public regulation governing on contracts**

In law system of our country, free will shall be considered as the accepted main theme and for this reason except for some cases where the law has created barrier against the effect of contracts, individuals' will shall govern on their fate [23]. On the one hand, the contract regarding transfer of object ownership as it scheduled to several persons is one type of agreements, which does not possess any framework in nominative contracts and at the same time it is one of the contractual examples that are introduced as private contracts in Art. 10 Civil Code; and on the other hand, no legal bar and reason might negate its validity. Thus, the given contract should be considered as proper and binding agreement in terms of inclusion in valid contracts if it does not contradict to the regulations [7].

#### **Characteristics of time-sharing contract**

By paying attention to the governing principles over contracts including will governance principle and Art. 10 of Civil Code and principle of correctness, it is shown that one should not add to domain of invalid contracts until the legislator has not declared a certain contract as invalid by explicit legal reference but in turn to

conclude the contract, its principal cornerstones should be sufficed including offer and acceptance and should interpret the contract in such a way that to lead to its authenticity as possible. Since time sharing contract was deemed as an agreement independent from nominative contracts and with respect to Article 10 of Civil Code and principle of freedom of contracts in Islamic jurisprudence and its effect that was proved so all condition for correctness of contract will be met in terms of general rules. It follows to contracts general rules in terms of conclusion and effects and like any other contract, both parties should have serious and sound will to enter it. They should possess the competence needed for conclusion of contract and also subject of this contract shall be clear and certain and legality of conducting the contract should be observed in such agreements [31].

This is a possessory contract in terms instinct effect and the original object belongs to ownership in this contract. Transfer of ownership is time bounded and scheduled. Duration of ownership in this type of contract indicates that the ownership of object has been transferred to individuals transiently for the limited time but such a conveyance is done routinely and constantly from one owner to another and this trend will continue without restriction to owner's life age for this reason it is completely similar to other ownership in this respect and it includes all civil rights such as conveyance comprising of purchase, lease, and even inheritance.

Period of this contract will vary in the form of variation table. It is different in order to administer justice or the periods belonged to any user may vary within several years and it will change as variation table and/ or it is possible to enjoy life- long ownership within different weeks only by payment of various price and appropriate to time position in each week. It has been formally recognized in terms of Iranian Statute Laws. Issuance of interest compromise instrument for the owner, which includes legal value and validity with legislative authenticity, may indicate that it has been characterized in laws of Islamic Republic of Iran that property never exists without certain owner and that property will be under protection and guardianship of the owners throughout of the year.

#### **Advantages and disadvantages of time sharing method**

Since it is not economically justifiable and usually feasible for most of people to purchase properties like villa for short term uses during the year particularly given that as age of building increases, the maintenance costs of villa will be added gradually and this lack of justification may outweigh further so adoption of time sharing method for this purpose and even in all industries including manufacture of computer, tourism industry, enable the users to enjoy really use from the villa by the much lower primary investments and payment of little maintenance costs for that residence. Accumulation of financial facilities may considerably save the costs and on the other hand at the time of vacation and recreation, this property might be exploited by other owner so there is no concern about uselessness and in fact the given property will enjoy support from its owner all the time and throughout days of year [3].

Unknown ownership status of the owner of the property with respect to recency of this method- worry about the problems caused by joint use from the same property by different persons with various habits and tastes as well as concern for timely fulfillment of financial accruals regarding the current and maintenance costs by all members and thus worry about the possible disorder in property maintenance affair (ibid) are some of disadvantages of this contractual method that may be adjusted by optimal management.

#### **Effects of time sharing contract**

It should be noted this point, before dealing with the relations between owners and limit of owners' powers in time sharing contractual method, that time sharing is one of those ownership methods which should be confused in it special accumulation of owners' rights with joint ownership of them since in this method rights of two owners are considered as accumulation in terms of nominative object without being joint ownership between them and since right of ownership for several persons toward a single property is type of longitudinal ownership in time sharing method so it can be implied that this is a particular kind of ownership i.e. after expiry of any period ownership turn will transferred to other owner and this trend continues constantly. In this method, right of ownership for each of owners is placed along with other's right and from this view one could find difference among time sharing and joint ownership.

#### **Relationship between owners**

As it mentioned in time sharing contract, property does not exist without owner since by expiry period of ownership, the property is transferred to other owner subsequently so that even after death of one owner, the ownership right is absolutely transferred to his/ her heirs. Thus, joint ownership is not assumed in this method. Some Islamic jurisprudents analyze owners' relations based on ad hoc ownership in subject of peculiar endowment. Accordingly there is no doubt that the descendant classes are not currently owners for the property since their potential ownership is subjected to extinction of former class. But they are ad hoc owners for the endowed property [32]. Against this view, some other group of researchers argue that right- less parties lack any forged right in terms of religion and ad hoc ownership is not special type of ownership but ad hoc ownership is potential competency of ownership not anything else [33]. By implication of these two bases in time sharing contract, ownership of transient owners who become owner of object respectively is like the classes of those who endowed for the property. Thus, according to ones who believe in ad hoc ownership in discussed issue, one could accept the present ownership of owners at time of their ownership term and ad hoc ownership for others. For example, suppose ownership of a house is transferred to four persons in the form of time sharing; if person A is

owner of this house for spring season, the other three persons are now ad hoc owners for that house. But according to basis of the second group, no ad hoc ownership is assumed for other owners since ad hoc ownership is not only individual's competence to become an owner. Therefore, other owners have no right over a property at the time of ownership for the current owner. By the aforesaid analysis, it might be mentioned that with respect to ownership nature, basis of second group is correct answer since ownership may not be divided into two classes. Accordingly, ad hoc nature (potential competency) is not a different version of ownership but since no one could perfectly reject the relation of other owners in transient occupancy and or consider the object as the absolute property only for the first owner so it should be concluded that given the normative and rational nature of ownership, there is no doubt rationally as the ownership is validated for the given person transiently and at the same time they never entirely reject other relationship between owners but they consider a weak and valid relation among the object and other owners so that it leads to restrict the limit of powers for transient owners.

#### Limit of owners' powers

Principle of ownership (right) freedom gives the person power to enforce absolutely variety of possessive ownership in their property. Limit of owner's powers is too large and wide in the cases when the property has a sole owner but where several persons have right of ownership toward a certain property whether as cross-sectional ownership i.e. condominium and/ or in the form of longitudinal ownership namely time sharing method, owner's powers are not so wide. According to the scholars who believe in separation of factual and potential (ad hoc) ownership, each of owners have any right for possession at the time of their factual ownership and since during time sharing period and definite period the given person is constantly owner of object, this ownership will be transferred to his/ her heir as well and at the same time since ad hoc ownership of others is also proved for this property at this time so owner's possessions will be allowed to the extent that it does not inflict damage to others' rights. Additionally, this does not negate nature of ownership. In contrast, according to viewpoint from those ones who did not consider ad hoc ownership as other version of ownership, other owners have no right against an object at the time of ownership by one other owner and for this reason the original object belongs to the current owner's right and no other right specified to that object that might restrict owner's powers and possessions. With respect to what it mentioned in this topic, it can be concluded that in time sharing contract, several persons are owners of a property periodically and each of owners may exert any possession in their property unless some of possessions create loss for others and or it could not act conventionally and meet their requirement or remove the loss while this restriction of owner's powers does not contradict to ownership right and its durability attribute in these cases.

### CONCLUSION

Fortunately, according to viewpoint from majority of Islamic jurists, time sharing contract is basically a legal and rational agreement and its legal bar needs to interpretation of reason and with respect to this fact that no convincing reason has been yet purposed that could challenge its legitimacy so there is no doubt in observance and considering this contractual method as binding one and it is completely based on religious law according to principle of freedom of contracts. Identifying this legal institution and exploitation from the provided facilities may considerably effect on economic growth and thriving of this country.

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