

Rules of fools and its difference between the laws Iran and France

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ABSTRACT

Fool or immature is someone his possession in his properties and financial rights is not rational, because lack of mental strength or weakness of will causes that daffy fails to use his property, rationally, and consequently he would lose his properties in vain and non-rational ways. At the opposite point of daffy is placed the wise and it is said to someone he can use his properties, rationally. These limitations for daffy is not in all aspects of life, but rather it is especially for the financial affairs and is not considered in non-financial matters such as divorce, martyrdom and so on. Iranian lawmakers have allowed to the fool to do the beneficial legal actions without the interference of his guardian, but in other legal actions the presence of guardian is requiring. In this case, the France laws are in accordance with Iranian laws and follow the same procedure.

KEYWORDS: fool, French's Laws, Iran's Laws, Guardian, guardian, limitation

INTRODUCTION

Meaning of fool

Being fool leads to the inability to use of the properties and it is someone who cannot and should not decide on her properties (Jafari Langaroudi, 1999, p. 259). In the law and jurisprudence it means someone his custom is to waste and his decides on the financial matters is not wise. In the Civil law of Iran fool and immature is synonym (Safai, 1998, p. 239)

Difference of fool and immature

Immature is someone, who after being mature is not sufficient grown to protect hi properties or after being mature he has lost his maturity (Second Martyr, 1988, p. 412) immature is someone that though in terms of time and age he has the potential for growing, but some barriers have prevented of his foolishness (Barikloo, 1999, p. 162), but immature is someone who has not reached puberty and to some extent has the power to understand and distinguish between gains and losses on transactions. It is possible that the immature is matured before puberty, but it does mean removing his limitation.

Difference of crazy and fool

Crazy basically lacks understanding and reasoning, whereas fool has to some extent the power of understanding and diagnosis and may even have academic qualifications and social value, but because of weakness or lack of will ha cannot manage his financial matters (Safai, 1969, p. 65).

Age of growth

In Islamic laws no certain age is determined for the growth, because for different individuals with respect to their physical and mental condition, their socio-economic situation and personal training it differs. Therefore, determining the age of the growth is allotted to the judges or parents, i.e. the judge or parent assessing the actions of the individual (according to the point of jurists and Wiseman) acknowledge his wisdom if his actions and behavior are in accordance with conventional practices and otherwise acknowledge foolishness (Katoziyan, 1992, p. 115).

Before the reform of the Civil Code of Iran, reaching the age of eighteen years was considered as the reason for maturity, but after the amendments come into operation in Civil Code, article 1210 states that: No one can be after reaching to the puberty be considered as fool, unless when his foolishness is proved.

The role of the court in the limitations of the fool

Immaturity of fool may be linked to the time of her being underage or it is possible that the individual after reaching the age of maturity to lose this attribute and to be limited. The fool that his immaturity is due to low age does not require the verdict of the court, because in the case of not identification of the growth his being fool and limited would be confirmed (Safai, 1969, p. 65)

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But in the case of the fool that his lack of growth is not connected to his low age and after being matured is faced with foolishness the verdict of the court is required. In other words, it is the court that determines whether the person in the past in a certain time has lost his growth and has been limited or not (qosemzadeh, 2005, p. 239).

Legal matters of fool

Foolishness is a picture of low intelligence, which occurs about the administration of the properties, but this mental impairment is not to the degree that prevents the person from decision making. Thus, the fool needs support and the limitations of the fool are not alike that for the immature or crazy, because though the fool may be unable to discriminate between bad and good things, but it can have intention and will. In other words the limitations of the fool are in the financial cases.

Yet, the fool to take financial decisions is not absolutely limited, but his financial transactions is subject to the authorization by his parent (if he is immature) or his guardian (if the foolishness has occurred after his maturity) and the fool has in some cases the qualification and the right to sign transactions. And Daffy have a plan to deal Essay and possesses capacity to conclude the transaction. But, legislation to protect his benefits and to prevent the misuse of his position has recognized his transactions illegal, regardless the permission to be obtained before or after the transaction (Barikloo, 2008, p. 163).

Limitation of the fool is in cases where he does a transaction and due to it he loses some benefits or properties, but where it obtains some benefits or properties the permission by the parent or guardian is not requiring (Paragraph 2 of Article 1214 of the Civil Code of Iran). In other words, limitation of the fool is relative, not absolute.

So, trade with fool is not allowed when there is a chance of benefit or loss and where there only the output of benefit it is allowed. Also, the legal acts of the fool are valid in non-financial matters. For example, he can without the permission of his parent or guardian to marry or divorce his husband.

The authorities of the parents or guardians are limited to what the legislature has delegated to him. For example, they cannot without the permission of the prosecutor to forgive or sell the fool's properties or to mortgage. (Articles 1241 and 1242 the Civil Code of Iran). They also have not the permission to decide absolutely on his properties, without the approval of the prosecutor (Katoziyan, 1992, p. 34)

Civic responsibility of the fool

Immature alike other crazies have civil liability and his lack of growth provides no legislative privilege for him.

Article 1216 of the Civil Code stipulates that: "whenever the immature or crazy cause losses he would be liable. According to this article, as the fool has the ability of judgment and reasoning, so there is no obstacle to his civic responsibilities (Taheri, 1997, p. 1944).

Another worthy point is that if someone assigned his property to the fool and the fool destroyed it or made a fault on it he would be liable and should compensate the losses, because he has wisdom and understanding (Arshadi, 2005, p. 249).

Criminal responsibility of fool

Given the difference between the fool and immature, foolishness does not lead to the elimination of his criminal responsibility and although the fool is limited in financial matters, but it is also liable of the effects his criminal responsibility so that if he confesses to a crime, which involves a penalty or punishment, he would be liable and if he to commit a murder, his foolishness will not prevent from his execution. Article 234 of the Islamic Penal Code stipulates: Confession to the murder by someone who is incapacitated due to the foolishness would leads to his retaliation.

Comparing the fool in the law of French and Iran

Poor-thought person is someone who has not lost all his wits, but his power of will is destroyed more than his power of understanding. So, the weakness of the thought is an ill slighter than the craziness and causes to the limitations. Please note that extravagance and profligacy in the property may also cause to the limitations. However, French law has assigned a specific title to the profligacy, and this way we should consider the profligate as person who has poor thought, as the profligate is someone who has not considered his rational and financial benefits at all and waste his possessions in vain. The Civil law of Iran has considered no distinction between waster and profligate and has considered both of them as immature (fool). Diagnostic criteria for both of them is to irrationally waste the possessions (Article 1208), and it is a law in general and includes both waster and profligate. Limitations of the fool in the Civil law of Iran have almost the same rights for the poor-thought person in the Civil law of French. In both cases, the limited has no substitute and has an only an adviser. In other

words, the limited based on his decision or the permission by his parent or guardian does transactions. The Article 499 of the French Civil Code stipulates this issue clearly.

Article 1241 of the Civil Code of Iran has stipulated a similar sentence: [transactions of immature and his financial decisions are not valid except with the permission of her parent or guardian. However this permission would be given before or after the transaction, but gratuitous ones is valid, also without the permission of the guardian].

Important differences in this case there exists between the Civil Law of Iran and French so that based on French law the legal acts of poor-thought person since the sign of the contract are influential and can be canceled. So, until the fool or his guardian has not quashed the legal act it would be valid. But the financial possessions of the fool in the Civil Law of Iran are influential since when it is given by his guardian (Katoziyan, 1992, p. 116).

As the financial decisions of the fool are not influential, so the fool can marry correctly, but determination of the financial condition of the marriage needs the allowance of the parents or guardian (Katoziyan, 1992, p. 118).

Also, in French law the marriage of the fool when the financial aspect there exists would be voidable (Arshadi, 2005, p. 249).

Conclusions

From the above context it can be concluded that:

- 1) Limitations for the fools are different from that for the immature. Limitations for the fools are about the finance matters and are the non-financial matters the fool's transactions, e.g. marriage, divorce, and witnessing, are valid.
- 2) As the fool has the power to think and understand the legislator allows him to do the beneficial transactions without the involvement of his guardian.
- 3) The fool can with the permission of his guardian to do transactions and other legal acts such as the sale and rental operations.
- 4) The fool as having very weak power of thought cannot handle his own affairs and needs the help of others. So, the legislator to support them has assigned someone to help them in their personal affairs, called guardian.
- 5) Legal acts of the fool since the signature of the contract in French law are influential, but it is not in Laws of Iran so that it can be influential only when his guardian is involved.

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