

Deals of insane and the non-distinguishing immature from the viewpoint of the rights in Iran and France

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ABSTRACT

Insane and the non-distinguishing immature in lacking the power of recognition are the same and are out the realm of thought and the governance of will. These two groups in legal actions have no legal will and cannot intent the meaning of the word given in a deal, thus, their deals due to lacking the intention and legal will are void so that they cannot even can receive donations. According to the Iran law, deals of insane at the time of his wits, are correct, because at this time, it was a healthy person with the ability of legal will and intention. But at the time of being insane or being suspected to that then their deals would be void. Deals of insane on French law is introduced relatively void, i.e. these deals with respect to the insane are void, but these deals are cause commitments for the other side of the contract. This way, when the guardian of the insane finds the contract beneficial for the insane then he can confirm the deal and it would be a valid deal. The reason for this is respecting the expediency of the insane and lack of intention as one of the constructing elements of the deal in the French system.

KEYWORDS: insane, the non-distinguishing immature, deal, will, Iran law, French law.

INTRODUCTION

Trades by persons whom lacking the qualification, e.g. immature, insane and fools, is legally void. It is because of their inability to recognize and respect for their own financial rights and therefore it is necessary to support them. The mental fault of the insane and the non-distinguishing immature is lower than that of the fool and the distinguishing immature. The insane and the non-distinguishing immature also have no ability to discriminate, which is even weaker than the ability to recognize.

So, people without qualification should be divided into two categories: persons lacking discrimination and people lacking growth. In this paper, transactions by the first group, i.e. those lacking discrimination, are covered.

Definition of qualification

Literally means eligibility, competence, having merit, passion and ability (Jafari Langaroudi, 2009, p. 739; Amid 1997, p. 220 and Dehkhoda Dictionary, p. 529).

Qualification absolutely means the legal ability of a person to possess or carry a right. The legal ability to possess a right is called Tamatto and the legal ability to execute the right is called Estifa (Safaei, 113, p. 2010).

Qualification is of two types: Tamatto and Estifa. The legal ability to possess a right is called Tamatto and the legal ability to execute the right is called Estifa. With respect to the Iran Law all people from the birth to death have the qualification of Tamatto. So, people considered in this paper, i.e. the insane the distinguishing immature have this kind of qualification and they can to possess some property or rights. But what is at issue is that they cannot have the qualification of Estifa. In other words, they cannot use of their properties or do legal actions such transactions.

Trades of people without the ability of distinguish (insane and the non-distinguishing immature)

The wisdom to distinguish is the greatest gift of God to man in order to help the human to distinguish good and evil, beautiful and ugly and also things and events around them and to manage their behavior in order to bring profits for themselves.

Insane and the non-distinguishing immature have a common attribute that they cannot to distinguish. In this paper, first deals of the insane and then deals of the non-distinguishing immature examined separately.

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Insane deals

The insane has no rationality and for this reason they think about the objects and events that actually get around him. Also, his behaviors and actions are involuntary and simply instinct and due to being out of the scope of thought and will do actions chaotic and uncontrolled. Words that they say are with no meaning and never they pay attention to their meanings or do not do them by will.

When the insane say the terms of a contract, including acceptance and satisfaction, does not consider their content and meaning and does not intend to fulfill its contents. So, the insane cannot create an entity at the world of credit that is dependent on the will of man. This means voidance of all legal actions of them, because the void legal action or in particular the void contract is the same legal entity which has no real existence in the real world. Therefore, in this law no difference there is between legal acts which would result in receiving donations by the insane with other legal acts.

Insanity is of different degrees. In some cases, it is so severe that they are not aware of themselves so that they cannot be aware of the way the walking on so that they may fall into a well with open eyes. They are deprived also of instinct. The severity of others may be of lower levels. They do not recognize objects and events around them and do not distinguish good from bad, but by using of the instinct and to some extent using that consciousness avoid dangers in their path and do not enter into the fire intentionally and the voices of the human or objects makes them aware are instantly.

Legal Acts of the insane, regardless of the severity of his insanity, are void. Article 1211 of the Civil Code stipulates: [insanity regardless of its severity leads to the limitation (or in Arabic Hajar)]. The reason for this is the lack of intension and the ability to know the law and its effects by the insane, regardless of the severity of his insanity. The insane cannot also to intent a legal action for the other, because every legal action needs the qualification of intention and as we saw the insane lacks this ability. For example, deals of drunk or the consumer of the drugs, which destroy their wisdom and consciousness, is also void, because they lack intention.

Deal of the cyclic Insane

Deal of the cyclic Insane can be considered in three different modes: insanity, Efaqeh and dubious.

Transactions and in general legal acts done by the cyclic insane, in the state of the insanity, like the permanent insanity, because of lacking the intention are void and rejected (Articles 212 and 1213 of the Civil Code).

Legal acts of the cyclic insane, in the mode of Efaqeh, are valid, because it is wise in this mode and like normal people he knows the result of his action and so he can to intent.

In the dubious mode, i.e. when his insanity or Efaqeh is not determined for certain, despite the claim of some authors of the Civil Rights (Imami, 1972, p. 207), legal actions of the cyclic insane like his state of insanity is void. Article 1213 of the Civil Code of Iran in this case states that: [the permanent insane absolutely and the cyclic insane in the state of insanity can take no decision on his own properties or financial rights, regardless of having or not having the permission by the parent or guardian, but the legal actions of the cyclic insane in the state of Efaqeh are valid, provided that his Efaqeh is determined for certain]. So, if the Efaqeh cyclical insane at the time of the transaction is not determined for certain the occurrence of the transaction would be dubious and according to the principle of the nothingness it must be ruled out.

In France Law, the legal actions of the cyclic insane is void, unless where its Efaqeh at the time contracting has been for certain and the existence the period of Efaqeh cannot void the insanity of the cyclic insane (Julliot De la Monandiere, Dr.civ.T.1, Ed.1965, N.958).

But it should be noted that, unlike rights in Iran, according to the French law, Insane deals, like that for the fool and immature, are relatively and not absolutely void. In other words, these transactions are void with respect to the insane, and with respect to the party to the contract are valid so that if the guardian of the insane considers the contract against the benefits of the insane then he can void the transaction, otherwise he can request the court to validate it. In the latter case, the other side of the contract cannot request the court to cancel the contract only because of the insanity of the insane (Mazeaud, Dr.civ.T.2, premier volume, Ed.1998, Montchrestien, N. 230).

In French law, it is originated from the protection of the expediency of the insane and the lack of intention as an important ingredient in the French Law system.

Transactions of the non-distinguishing immature

Legal actions of the non-distinguishing immature alike that of insane is void, because the non-distinguishing immature alike to insane is not only cannot to respect his properties in the financial matters, but due to lacking the power to distinguish he cannot intent to does legal action and lacking the intention would lead to the voidance of the legal actions.

The non-distinguishing immature due to lacking the intension cannot even receive properties in donation and cannot receive a finance that is free and if to possess a good object would not be its owner. So, the Article 1212 of the Civil Code of Iran, after declaring the general rule of nullity of the actions and sayings of the immature, has given the right of accepting donations exclusively to the non-distinguishing immature.

Conclusions

Some people in Iran are assumed lacking the qualification of Estifa, which means they have rights and properties, but they have not the right to use of them. These people are unable to recognize their benefits and then they need protection of others. So, the legislator to support these individuals has deprived them of their rights and properties and to use of them properly has authorized this ability their guardian. Insane and the non-distinguishing immature in lacking the power of recognition are the same and are out the realm of thought and the governance of will. These two groups in legal actions have no legal will and cannot intent the meaning of the word given in a deal, thus, their deals due to lacking the intention and legal will are void so that they cannot even can receive donations. According to the Iran law, deals of insane at the time of his wits, are correct, because at this time, it was a healthy person with the ability of legal will and intention. But at the time of being insane or being suspected to that then their deals would be void. Deals of insane on French law is introduced relatively void, i.e. these deals with respect to the insane are void, but these deals are cause commitments for the other side of the contract. This way, when the guardian of the insane finds the contract beneficial for the insane then he can confirm the deal and it would be a valid deal. The reason for this is respecting the expediency of the insane and lack of intention as one of the constructing elements of the deal in the French system.

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