

THE LEGAL NATURE OF ATTORNEY DELEGATION

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***Abstract-** Appointing deputation means delegation of power to a third party attorney. In the theory of delegation to a third party, defining the attorney's position and its consequences can be of great importance. It is very important to define if the third party's authority is the same or partial as that of the first attorney and can lead to different consequences. After delegating to another one, each attorney's authority can also be investigated. Based on the foregoing, this research has been conducted to define the difference between delegation and appointing in Iranian jurisdiction. Based on the results of this study, despite appointing in which the attorney is still in authority, in delegation the first attorney will not be in authority after defining a third party. It seems that due to its function, this topic is of great importance in the attorney contract. Attorney contract is a kind of optional contract in which mutual confidence, especially the customer's confidence in his attorney matters.*

***Key words-** Appointing, delegation, Attorney, Iranian jurisdiction.*

I INTRODUCTION

Depending on the social needs, attorneys 'documents and sometimes attorneys' delegation is provided in notary public. The existence of a variety of administrative requirements and expediting the transfer process make these two types of documents available.

However, the main question is what legal relationship the parties mean in preparing these two sets of documents and which of these two types of documents will benefit the beneficiaries by establishing a legal relationship? And are the terms appointing an attorney and Delegation synonymous or opposites?

Given that each of the above two terms are different from each other, and also if we accept the dominant assumption that the different terms are in the expression of separate legal effects, it becomes clear that the two terms should not be synonymous in legal terms and at least have different effects. Because it is clear in position as a literal one, it pursues a specific intention and intention of carrying the word on its usual meanings and the legislature is not in vain.

Given these assumptions at the outset, it would seem that there must be a clear distinction between the two terms in legal terms as well as in legal matters. Because it seems that carrying the title of appointing is considered a survivable power of attorney, but it should be considered finished after the authorization has been given, so they are not synonymous.

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II THE LEGAL ESSENCE

Appointing an attorney is defined as taking an alternative to occupying and appointing another person to perform the power of attorney (Kashani, 2001, p.226); however, the Delegation of a lawyer does not mean giving the assignment to do a job, but rather a delegated power of attorney from one person to another. In this situation, in appointing another person our hypothesis is the survival of the estate of the assumed lawyer. However, in the delegation, the presumption of law must be terminated.

Prominent Iranian lawyers have argued that in determining the dowry, if a third party refuses to accept the right that has been delegated to him/her; in case of death before the date of determination of dowry or becoming insane (Katoziyan, 1985, p172); it is up to the court to determine the dowry, unless the request for arbitration is made.

According to this statement, it seems that in delegation a lawyer, delegator is subject to his discretion and does not obey any of the rules (Amirmo'ezzi, 2009, p 35).

However, in appointing to others, the lawyer who appointed will rise and act on the wishes of his client and does not declare his will and option.

Speech One - Brief introduction of contract transfer

A detailed study of the contract transfer entity is entrusted to its specialized sources, and here are just a few of the key features of the entity above:

- I. In cases where a third party may be a substitute contractor, it is assumed that one of the parties transfers its legal status, including the rights and obligations arising out of the contract, to the other and makes him his deputy.(Moghaddam, 2007 p 229)
- II. In the theory of contract transfer, the contract itself is objectively and irrespective of its parties, an independent entity that can be the subject of a transfer.
- III. In Iranian law, the above institution has not been dealt with, as it should be. Nevertheless, there are scattered examples of this in various laws, including Article of the Civil law on Rental, Article 17 of the Insurance Law, and Article 12 of the Labor Law on the Legal Change in the Ownership of the Workshop.
- IV. For the transfer of the contract, the consent of the contracting party is required, since one of the main consequences of contract freedom is the freedom to choose a contracting party, the principal party to the contract has voluntarily selected a person as the party to the transaction, so the change must also be accompanied by his consent. Some legal texts reinforce this notion. For example, Article 541 in field contraction contract of farm letting, Article 545 in planting partnership, and Article 554 in Speculation capital bailment is cases where the legislator refers to the need for consent.
- V. In transferring a contract, one of the parties to the contract, which we call the principal party to the contract, remains the same, but the third party replaces one of the parties to the contract. The purpose is to transfer the contractual position of one of the parties, together with all the rights and obligations arising there from, to a third party.(Moghaddam, 2007, p 230)

- VI. The most important effect of the transfer of the contract is in fact that the transferee has departed from the legal relationship and the transferee becomes the first special deputy in the contract in respect of all rights and obligations in such a way that the third-party has all the rights of the transferee and is bound by all the duties that the transferee has undertaken. On the other hand, by relinquishing the transmitter, he was acquitted of all obligations he had undertaken and has no right anymore

Speech Two - Terms of delegation

Under the terms of the delegation, it is necessary to pay attention to the followings: first, delegation is a contract and follows the general rules of contracts. Therefore, in this section, we will not address these conditions. Second, the relation between power of attorney and delegation is logically public and especially absolute. In this sense, any delegation is accompanied by appointing, but not every appointing is necessarily a delegation. Thus, because of the logical proportion of these two of the four ratios of the science of logic, in this section, we will not speak of the specific conditions of power of attorney. Nevertheless, the most important condition that applies to the terms of delegation is the power of delegation within the scope of jurisdiction. The lawyer must have the power of delegation and appointing, with the exception of the other, to be able to return another lawyer to do the case. (Sadeghi, 1997, ps154-155)

The reason for this coercion is that a lawyer is a permissive contract (Yazdi 1997 ps214-215); the lawyer is allowed to act and does not have any independent right to transfer it to another. (Moghaddam, 2007, p 230)

On the other hand, the power of attorney is one of the contracts where the lawyer is the main cause of the contract. The client trusts his lawyer with an understanding of him and chooses him as his lawyer. Therefore, a lawyer cannot represent another person as a lawyer without the client's consent. Based on the above, it can be said that the principle is that the lawyer has no authority of appointing. Appointing authority is an exception that should happen within the scope of the client's permission so that a lawyer can be appointed. Therefore, Article 672 of the Civil Code provides the following conclusion:

"A lawyer in a job cannot attorney to another, unless, explicitly or by reason, the lawyer is in appointing."

If the lawyer obviously has appointing authority, there is no doubt that the lawyer has the power to choose another lawyer. (Helli, 1986, p270) However, it is not only by affirmation that the lawyer has the appointing authority rather; it is acceptable to imply the authority of appointing. Jurisprudents have also accepted appointing if they are not advised, but it can be overlooked. For example, if the client has told him/her about the power of attorney, you can do it any way you want or, it would seem, to act as a lawyer away from them or the lawyer at the time of the contract of attorney is incapable of performing the power of attorney, These can be evidence that the lawyer has the power to rely on another lawyer. (Shahid, Thani, 2008 ps374-376)

One must now consider the guarantee of a case where the lawyer does not have the appointing authority, but he chooses another lawyer. In such a case, the action taken by the second lawyer shall be considered as interference and if the damage is also found to be genuine, Article 673 of civil code shall apply. Pursuant to this Article, if the first lawyer did not have appointing authority but delegates the matter to the third party, each lawyer and the third party will be liable to the client for damages caused. The type of liability of the first lawyer for the client because he or she violated the contract is a "contractual". However, there is a "presumptive trust"

between the client and the second lawyer. But the legislator, without excluding the above conditions, considers responsibility only if causation is possible.

Like other authorities of lawyers, appointing authority also depends on the client's permission. Therefore, as the lawyer himself can be dismissed, his powers can also be revoked. Now suppose a client has given his lawyer the appointing authority the lawyer has also appointed another lawyer, but prior to appointing, the client loses this power of attorney. However, if the news of this restriction of authority came to the first lawyer after the appointing, is it true or not? The answer to that question will be important when the second lawyer has taken action at that time.

In the author's view, Article 680 of the Civil Code can be used to provide an answer to the above question, if we accept that disqualification is, in fact, partial dismissal of a lawyer. The Article provides:

"All the matters that a lawyer has to do with his lawyer before the news of dismissal reach him are effective."

Therefore, until the lawyer is informed of his disqualification, his appointing authority remains valid and his appointing will be correct.

III COMPARING THE EFFECTS OF APPOINTING

a. Assumption subject to the power of attorney to choose a lawyer.

In this case, the subject of the power of attorney is the choice of lawyer, and with the exercise of the power of attorney, the first power of attorney is revoked (Article 683 of the Civil Code). The first lawyer is a third party to the contract that he has entered into, and the contractual effects of the lawyer appear to the client. In addition, since the power of attorney of the first lawyer is revoked, he has no right to dismiss the second lawyer and after the election of his lawyer, his death or incapacitation will have no effect on the secondary lawyer. (Izanloo, Pourghorbani, 2001, ps12-13) This is often the case with regard to the choice of justice lawyer.

b. Assume the longitudinal and transverse relationship between lawyers and clients

To clarify the issue, we first start with the survival of the principal, which called a client in the power of attorney. In this case, it is noteworthy that there is almost no doubt that on the subject of delegation, the client remains and will not remove from the legal relationship. It can even be said that the second lawyer is, in any case, the client's lawyer, because how can he not be considered a lawyer when all the work done by a second lawyer is written to the client? That is why jurists have stated the possibility of dismissing the second lawyer by the client or referring to the termination of the lawyer with the death or incapacitation of the client. (Rouhani, 1996, p290)

Therefore, with the above point, there is no doubt in creating one of the effects of the transfer of the contract by delegation but doubts remain as to whether or not the first lawyer will be removed from the legal relationship. In this regard, it should be noted that it should not be assumed that all cases of appointing comply with the delegation. In fact, appointing (from B to C) itself can have different modes. These cases can be divided based on the survival or removal of the first lawyer from the legal relationship. Accordingly, the different states of appointing can be enumerated as follows:

Sometimes by choosing a second lawyer, the first lawyer still stays in the field. In this case, the relationship between the first and the second lawyer is sometimes transversal and sometimes longitudinal.

- I. Transverse Relation: In such a way, that B chooses C not as his lawyer, but as lawyer A (principal client). In this case, A and B come together as one. First, since each of the two lawyers is independent of each other, neither can affect the other. (Yazdi, 1999 ps214-215) Therefore, no one has the right to dismiss another. On the other hand, with the termination of B's attorney; C's attorney will not disappear. Therefore, if B dies or becomes encumbered, C will remain a lawyer. Second: Since B and C are directly the lawyers of A, he has the right to dismiss C and of course B anyway.⁷ Third: b is not excluded from the legal relationship, so it remains in the attorney relationship. Therefore, we believe that this does not fit the "delegation" of the venture to the "contract transfer" format, because by definition in a contract transfer, the transferee is removed from the legal relationship by the contract transfer. While in this case, B remains in the legal relationship.
- II. Longitudinal relationship: In this case, the second lawyer is the lawyer of the first lawyer, not the lawyer of the principal, so in the relationship between the principal and the second, the first lawyer remains. (Rouhani, 1996 p254) Therefore, C's power of attorney is subject to B's power of attorney, so he has the right to dismiss C (since C is Lawyer B) and with the loss of B's power of attorney, C's power of attorney disappears. However, this kind of relationship should not make A's role forgotten. A's rights to dismiss C remains. Because it cannot be denied that all C intermediary acts are effective in the legal status of A, so withholding the right of dismissal from A, it is not logical and fair. Given B's survival in the legal field, this situation cannot be compared with the contract transfer format.

Speech Two - The Effects of Delegation

In this case, unlike appointing, the first lawyer will be removed from the legal relationship by choosing the second one and transfer all his rights and obligations to C. This case, which is commonly referred to as delegation in the notary public, exactly matches the "contract transfer".

The essence of the delegation is the transfer of the contract and the most important result is the transfer of the contractual position and the removal of the carrier from the legal relationship and the substitution of the transferor in his place. The transfer of the contractual position of the first lawyer to the second lawyer ensures that the latter shall be fully entitled to all the rights and liabilities of the debt resulting from the transfer of the power of attorney. A contract transfer is a situation where a third party replaces one of the parties to the contract. (Sho'ariyan, 2009, ps251-252) In other words, in the transfer of the contract, the purpose is to transfer the contractual position of one of the parties, with all the rights and obligations arising there from, to a third party.¹⁻²

The most important points and effects of this mode are as follows:

- I. Since in this case, the first lawyer is removed from the legal relationship and is not recognized as lawyer A, it is clear that status b will not be effective in status c. Therefore, B is not entitled to dismiss, and with the death and incapacitation of B, C attorneys will not be dismissed.

- II. Person C shall assume all the obligations and responsibilities which B has as a lawyer. Therefore, it may, under the terms of the contract, claim the aforementioned fee in the power of attorney or operate authority that B has and will be responsible for all the obligations that A has made.
- III. The status of A in this legal relationship has not changed. Therefore, he is considered to be entitled to the claims he has previously made and transferred to C. On the other hand, if it has committed to B, it has also committed to C.
- IV. The transfer of a contract does not dissolve the contract; assuming that the contract is transferred to the previous one. Nevertheless, it cannot be denied that the institution of transfer of the founding contract is in a new condition; therefore, its effects are not on the past but on the future. Therefore, delegation as an exemplar of the above template cannot make any difference to its predecessor. Therefore, A cannot call for the fulfillment of the commitments that B must have made earlier in a given date.
- V. C may have made commitments to B or may have acquired rights. However, this has nothing to do with A. In fact, the internal relationship between B and C against the client (a) will not be invoked, but B and C are in any case responsible for the obligations they have made to each other.
- VI. To determine the parties' intent, the title chosen may undoubtedly be used in the selection of a delegation or appointing; But the truth is that this title can have as much as a judicial statute in recognizing the intent of the parties

IV CONCLUSION

Unlike appointing to others, where the first lawyer remains in the contract, Delegation seems to disrupt the first lawyer in the contract. This issue because of its specific essence is very important in a lawyer's contract. Lawyer contracts are one of the permission Contracts consented contracts; in which the trust of the parties, in particular, the client to lawyer, is essential. It is for this reason that there is no place for believing in the confidentiality of information in Iranian law. To minimize the abuses that the Entity of delegation may have in our rights, it should be limited to the appropriate parties.

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