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The Survey of the Legal Status of Indispensable Formal Documents Enforcement in Iran's Notary Organization

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Abstract:

In general codes of law of the countries including Iran there are special rights predicted for the owners of formal documents and other documents featuring formal document in order to accredit them and facilitate the business transactions. This is also considered as some sort of de-judicialization and the owners of such documents do not need to attend the courts as plaintiff and prove their claims and also they are not required to pass the formalities and the long procedures of trials and having such documents at hand they can refer to the notary enforcement circles or the notary public offices to take advantage of the rights justified for them therein. It is in this manner that they should first observe the rules of formal documents enforcement approved and ratified in the indispensable formal documents rules of procedure and the other sanctioned regulations. In the present study, the formative and the natural issues pertaining to the indispensable formal documents and the ordinary documents which can be enforced as ruled by the law (such as cheques) via the notary enforcement circles and transiently via the judicial courts will be investigated. The author's intention of writing the present research paper has been, firstly, the elaboration of the legal principles and concepts of indispensable formal documents, explication of the formative and the natural issues related to the indispensable formal documents enforcement and the ordinary documents which can be enforced as decreed by the law, as well as the expression of the administrative formalities and the legal processes such documents are required to undergo in public notary offices (enforcement unit), and, secondly, the exposition of the study subject matter from the legal status perspective of documents enforcement through notary enforcement and, finally, there is this possibility that after a judicial writ of execution is issued the obliged individual or the third party may have objections regarding the judicial writ of execution issuance or the executive operations. Therefore, their objection rights should be accepted and taken into consideration regarding the judicial writ of execution or the executive operations based on the relevant statutory cases and this is analyzed in the fourth chapter of the present study. It is necessary to explain that justice ministry courts are sometimes qualified to deal with the objections to the judicial writ of execution issuance or operations and this is exactly the very topic of "special legal regime".

Keywords: Indispensable formal documents, Notary execution, Writ of execution, Executive operation, Ordinary documents featuring indispensability.

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Introduction

One problem contributing to the increase in the quantity of the legal lawsuits in the society and incurs the citizens and the society with costs is the ordinary ways of filing the documents and evidences. Some of the citizens suffice to the ordinary filing of the documents due to their inadequate awareness of such advantages and such a measure faces them to a great many of the problems in future; therefore, it seems necessary for them to get familiarized with such indispensable documents and the advantages that formal ways of filing documents may bring about for them.

Generally, documents can be divided into ordinary and formal. In article 1287 of Iran's civil law, formal document is considered as the one which has been arranged in notary offices and/or public notary offices or the ones at the hands of other legal sources within their jurisdiction based on the law. (Emami, 2012).

Overall, the legislator considers advantages for the formal documents which are considerable in respect to the ordinary documents. Based on article 1292 of the civil law, for example, regarding the formal documents in a case where a formal document has been offered by an individual, there should be exercised no doubts and denial meaning that the individual cannot deny his own signature in the document unless it is proved by him that the document is a fake one.

The second advantage regarding the formal documents is that according to the article 1305 of civil law, the formal document date can be referred to by all of the individuals. But the ordinary documents date can be referred to by only the ones who have arranged the ordinary document.

It has to be pointed out regarding the documents' indispensability that at the first place upon hearing the term indispensability the idea may strike the mind that the implementation of the document's contents and articles is compulsory for the obliged person. This is while such a meaning is not exact because every document can bring about commitments and obligations for the liable party, whether be it a formal document such as a formal affidavit or an ordinary document such as an ordinary written undertaking, so every document creates commitment for the one who is obliged accordingly.

By indispensable document, the legislator means that the promisor of such documents can, instead of referring to justice department courts, refer to the notary offices. In the meantime, the individuals in case of having ordinary documents can only file lawsuits to the justice department courts to vindicate their rights.

There are two ways in formal documents: one is referring to the justice department and the other is directly referring to the notary offices which will consequently enter the executive stage. Due to the significance given to some of the ordinary documents by the legislator and in thought of not imposing such ordinary documents with a time consuming process, some of these ordinary documents can also be envisioned as indispensable papers, such as cheques.

Though cheques are considered as ordinary documents, but the legislator has placed it in the group of indispensable papers in article 2 of cheque issuance law. This bears the idea that the individuals can refer to both the notary offices and the justice department to cash their cheques' sums. (Adabi, 2009).

There is no comprehensive and detailed study regarding this research topic and there are only some books in this regard all of which are general and incomprehensive, including:

Bahrani (2013) in a book titled "indispensable formal documents contents enforcement" has transiently and without taking the related practical and legal problems into consideration dealt with the enforcement procedure.

Madani (2013) also in a book titled "formal documents contents enforcement" only deals with the explication of the rules of procedures regarding the formal documents substances and the enforcement procedure has been expressed succinctly devoid of any comprehensive analysis.

Najafi (2005) in his book "notary law as explicated in the law" has dealt with the formal documents contents enforcement regulations and although the relevant statutory cases have been fully explicated but a thorough analysis of the practical barriers and the bottlenecks is missing.

The objective of the present study is:

- Expressing the differences between the regimes governing the tax affairs administrative issues, the executive regulations ruling the social security organization receivables and the rules administering the ministry of justice law verdicts enforcement.

It is worth mentioning that the aforesaid documents can also be enforced via the courts but based on the de-judicialization philosophy and elimination of the lengthiness of the trial process in the courts as well as the low cost of enforcing the documents via the notary office in comparison to the courts and other cases of the like, the individuals are more willing to put their documents in effect via the notary offices channel. (Madani Kermani, 2006).

Therefore, it has to be pointed out that the author in the present research is not seeking to pathologically study the registration rules and regulations, the reasons behind the such a

density of the notary files, the whys, do's and don'ts and issues of the similar nature regarding the individuals preferences to refer to the notary offices instead of referring to the ministry of justice departments in order for their claims to be tried; rather, the author intends to investigate the advantages of the formal documents as compared to the ordinary documents, both in terms of their nature and form, the status quo of the documents enforcement in Iran's law, administrative formalities, the legal system governing the executive operations and principles (rules and regulations), administrative procedures, the documents qualifiable for the issuance of a judicial writ, identification of the departments with qualifications of issuing judicial writs, objections that can be made to the executive operations or issuance of judicial writ, cancellation of the executive operations, elucidation of the authorities involved in the law enforcement and the method of complaining about the instructions or actions ordered and taken by them and other issues of the like.

Materials and methods:

The present study is an applied research and there is made use of a descriptive-analytical method to accomplish the objectives and reach conclusions in line with which it is dealt with the realities of the affairs and then the various ideas and notions in this regard and finally the results of the study are presented through the analysis and investigation of such ideas. To gather the data and information required for the present study there is made use of library research and the needed material are excerpted through referring to the books, essays and the dissertations performed on the topic while the trusteeship principles are strictly observed. The instrument used by the research is research notes.

Indispensable documents:

A formal or an ordinary document for which judicial writ can be issued without acquiring a verdict of the courts in order for the contents therein to be enforced, such as a formal document of a payment or cheque (Gholipur, 2015).

Results:

The enforcement of the indispensable documents (as well as the ordinary documents with the potency to be enforced such as cheques) via the public notary circles in contrast to the courts has advantages and disadvantages and the individuals sometimes prefer to refer to the judicial courts and in certain cases to the penal courts instead of referring to the notary enforcement offices and of course the opposite assumption holds true; to wit, the individuals prefer to refer to the notary enforcement circles instead of the courts in order for the contents of their formal documents to be administered.

The advantages and the disadvantages of the documents enforcement via the notary offices administration:

1. Advantages

The executive operations in notary office are usually judicially pursued in a faster pace. The judicial undertakings usually follow the trial-specific formalities whereas taking measures via the notary offices does not follow such formalities and it is most often performed with a greater speed.

Quite similar to the larger expenses incurred as a result of not adhering to some of the rules inserted in the business law on the owner of the document when claiming for a lawsuit, the contingent reimbursement of the compensation when requesting for property confiscation is an example of such costs.

One of the other advantages of suing a cheque via the notary offices is the reduction in the density of the files and it is stated that “generally, referring to non-judicial courts including the notary offices brings about a reduction in the density of the files in the justice department and it causes the justice department to spend its time on critical and complicated legal issues.

2. Disadvantages:

Concerning the disadvantages of the documents enforcement via the notary circles and as an specimen regarding cheques it is worth mentioning that administrative measures taken via the notary offices are only made against the issuer of the cheque and the owner of the cheque cannot apply for the confiscation of the properties of the other liable individuals in the notary office, whereas the owner of the cheque can refer to the judicial courts to take actions against all of the cheque liable individuals including the issuer, the ones endorsing the cheque as well as the guarantors.

Taking measures via the notary administration offices is devoid of penal aspects and it is considered as a non-judicial act, whereas a judicial act can be qualified for penal aspect and it can finally lead to the determination of punishments for the issuer of the cheque. It is evident that the debtor may undertake to pay his debt faster in fear of being incurred with a punishment.

Another disadvantage of suing via the administration office of the public notary is connected to the lack of legal compulsion of the article 1 of the law on the method of financial sentences enforcement approved at 15/10/2014. It states that “in case that an action is taken via the notary administration office and on the condition that a property of the debtor is not identified, the owner of the cheque cannot apply for the enforcement of the article 1 indicating the financial sentences execution or the debtor’s custody”. (Haghighat, 2012).

Discussion and Conclusion:

The following results are inferred of the material put forth so far:

1. The formal documents enforcement or, if put differently, the formal documents contents execution is one of the most significant parts of the Instruments and Landed Property Registration Department/Authority law in the country.
2. There were many problems and challenges regarding the discussed topic in regard of the formal and indispensable documents content enforcement before the enactment and codification of the general regulations of the formal documents contents enforcement authorized in 2008 because, though of a great importance, such documents used to be enforced via the Instruments and Landed Property Registration Authority law approved in 1931 and the general regulations enacted in 1976 both of which were replete with legal flaws and gaps.
3. It is expected that now that the courts and the notary offices (the execution circles) act interchangeably to enforce the formal documents contents we will no longer bear witness to the complicacies and the long processes of undergoing the formalities which occasionally take several months or years and the current status of affair turn to a situation where assuming that an individual choosing to refer to the notary office administration circle instead of a court as a results of its long delays and long trial and sentences enforcement duration may not face the previous problems and challenges.
4. It has to be said that it can be perceived and inferred from the context of the current rules and regulations in Iran's law that any sort of interpretations and clarification or downsizing of the judicial writs regarding the perpetration of criminal acts resulting in the enforcement of the formal documents, the occurrence of the cases predicted in the non-litigious matters law when taking executive operations and other cases of the like are all within the competency of the courts and the notary office (administration circle) has no jurisdiction therein.
5. This can be explicitly inferred from the context of the formal documents contents enforcement approved in 2008 that besides the other formal documents and the indispensable documents, cheques, though being regarded as ordinary documents, can be put into effect via the notary office administration circle and it is considered as a specific advantage for the aforementioned document in this respect.

At present, in all of the dynamic and modern legal systems, such as the North America continent, Oceania, Europe and even eastern Asia, the traditional and paper works have been replaced with electronic conducts and the paper works have been totally eradicated from the data administrative system. Unfortunately, in administrative and

legal system of Iran the officials and the authorities in charge of such matters have not endeavored sufficiently the way it deserves in this regard.

So, it is suggested that the formal documents contents enforcement should firstly get rid of its traditional status and freed of paper works; secondly, there is a need for a full-scale effort, struggle and seriousness in regard of enforcing the formal documents by the individuals via electronic (virtual) mechanisms; thirdly, in notary offices, all of the departments, should be staffed with specialist individuals informed of the computer sciences or at least the operators and the employees of the related circles should be previously trained with the necessary educations and skills.

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