

Investigation of the Nature, Types and Objectively and Debtrights Effects

Sahra Farhang Kheradmand¹, Mohammadreza Sharafat Peyma²

¹A graduate student in Department of Private Law, International Islamic Azad University of Bandar Anzali, Iran, ²PhD in Department of Private Law, International Islamic Azad University of Bandar Anzali, Iran

Abstract

One of the major financial rights divisions is the division of rights into the objectively right and the debt right. The objectively right is a right which is applied directly on the subject and it is not necessary to be demanded from other one, it has two elements: Subject and right owner, and is tangible and observable. Absolute in the sense that all are bound to respect. The effects of this right can be noted, this right with respect to external objects is imaginable and right owner should be entitled the right to exploit and be advocated to exercise it. Debt right has three elements: Creditor, debtor and right subject which in terms of creditor is called demand and in terms of the debtor is called the commitment which can be taken place in three forms: Act form or act quit or transfer of property. The creditor can only right to refer to the creditor and his obligation to implementation of the commitment. Commitment which is the most perfect type of this right is a practical obligation to validate the performance of the obligation. And also, the joint effect of any commitment. Possibility of demand is to fulfill that promise that in the case of refusal of the debtor, his obligations can be taken place through the courts.

Key words: Right, Rights, Object, Debit, Objectively right, Debt right

INTRODUCTION

Division of financial rights into debt and objectively rights is the most classic and traditional classifications. (Saeedi, 2008, p. 19). The rights of objects are applicable through two ways; either the required object is enjoyed directly or by others. On this basis, financial rights are divided into objectively and debt groups. Objectively rights allow the owner to use its subject directly. The right owner does not usually need to the other one to implement and observe it and is immediately authority. This need is felt only when that right is violated. The perfect type of "objectively right" is ownership that gives the right to the property owner all forms of occupation and exploitation right. Occupation and exploitation right is sourced from ownership which its owner has a part of his ownership right. The objectively right is sometimes subordinative, it means it is developed by subordination of debt right. The objectively subordinative

right is realized while it is the certain object of pledge. The right gives the authority to the creditor to, if the debtor refuses to pay the debt, he can demand his quest from the sale of pledge. So, the debt right of the creditor, as the result of being pledge becomes objectively right and is applied immediately. However, because the rights of creditor on pledge is subordinate and dependent to his demand from debtor and is removed by its falling or payment, it is called "the objectively subordinative right". This right does not give the authority to exploit and occupy the object to its owner and is the only means of his demand guaranty and does not include its ownership right and branches. The debt right that a person has on other one and can ask him to transfer and deliver the property or to carry out a work, in this assumption, the right owner is connected to external properties by debtor, and indirectly. The practical way of right exercise is that persuasion forces the debtor to implement the commitment from the court and in this case, it is called "private right" too (Katouziyan, 2014, p. 25). The most obvious concept that all knows of the law is that its rules are imposed on individuals and create obligation. The three types of rights are political, public and private rights. An optional private right is a right that any person has against others, such as ownership right, Abbott and Benoit right, survivorship right and exploitation right (Katouziyan,

Access this article online



www.ijss-sn.com

Month of Submission : 07-2017
Month of Peer Review : 07-2017
Month of Acceptance : 08-2017
Month of Publishing : 08-2017

Corresponding Author: Sahra Farhang Kheradmand, Graduate Student in Department of Private Law, International Islamic Azad University of Bandar Anzali, Iran. E-mail: sahra.farhangkheradmand@yahoo.com

2010, p. 257). In law, we declare property to what has two essential conditions: one condition is that it must be useful and fulfill a need, whether it is material or spiritual need, and one condition is that it can be appropriated to other person or certain nation. At past, the word "Property" was applied for material property, but current life development gradually limited its meaning, as today, all various elements of assets are called property (such as land and movable property and financial rights demands, and even copyright and patent and Goodwill rights). Civil law has been discussed on property division at the first chapter, but it did not define it. Despite it, by considering the meanings of this term (articles 946, 872, 1214 and 1217) it seems that the law authors have considered it in its broad meaning. In this sense, the word "property" is called to all objects and rights that have economic value. In some cases, in order to remove any ambiguity (property and financial rights) are mentioned together. This detail seems redundant and criticism logically and is a memory of periods that property and financial rights were two separate concepts. Thus, the word property in current usage is used in two, material and legal meanings: in material and limited meaning, property is applied to objects which are the subject of legal transactions between individuals: such as house, car, rugs and jewelry. In single and legal meaning that includes financial rights that people may benefit from the material objects, such as ownership rights and demands from others (Katouziyan, 2015, p. 10). Right is divided into financial and non financial right. The non financial right is a privilege which aims to meet emotional and moral human needs. The subject of this right is non-financial relationships of individuals. It does not value to be transacted and cannot be assessed and exchanged. But financial right is a privilege that the rights of each country give them in order to meet the material needs of people. The purpose of creation of financial right is setting relationships which are between the individuals in terms of the use of objects, and its direct subject is to support material and valuable profit. These rights, unlike the former, can be exchanged and evaluated to money: such as ownership right, exploitation right and demand right or sum money or doing certain work (Ibid, p. 12). There are only two main pillars in objectively right: 1) the person who owns right, 2) the property which is the subject of the right. (Katouziyan, 2014, p. 24) Dr. Katouziyan in his book stated that on objectively and debtrights differences that the objectively right is attributable against all people, while the debt right is only on debtor and his assets and the creditor can only refer to him to collect the debts. On this account it is said: objectively right is absolute and debtright is relative. The right owner can directly apply it and catch the subject of the right from who have it. Therefore, it is said that the objectively right includes the right of the chase. But the debt right does not have this advantage and

its implementation can only be beholden from the debtor and can be taken from his assets. objectively right guaranties the priority for its owner. This means that, whenever a certain property prescribed by the actions of both rights, the objectively right (either original or subordinative) has priority on debt, because it was said that all people, and, such as creditor, is attributable. As mentioned above, the objectively right is related to property rights and debt right is related to commitment. The concept and attributes of property are always changing, especially in the nineteenth and twentieth centuries, by the development of thought of nationalization of industry and properties, limitation of individual ownership has changed and the rights of individuals against the public forces have been limited. But, because these attributes must be accepted as a principle, ownership can be defined as "ownership is a permanent right, which one can occupy a property at legal extents and uses of all its benefits". Also, commitment which is related to debtrights can be defined as "a legal relationship whereby a person is obliged to transfer or deliver a property to another one or doing something for him, whether the reason is a contract or unilateral obligation or natural cause". A person who is obliged and bound against another, a debtor or beholden, and who has the right to demand and force is called creditor or beholder. (Katouziyan, 2014, p. 27).

THE CONCEPT OF THE RIGHT

Right is one of very meaningful word that evokes the most basic human aspirations. It has wide application in different fields and different meanings were defined for it that are mentioned at following: Right is an authority that law gives to individuals to perform an action. People are free to do and not to do it. Freedom of action is the essential element of right. (Imami, 2005, p. 134) sometimes, right means standstill in action and whatever surely has fixity, or really it will have. Various derivatives of right in this sense have been used in Quran and prayers. The documents of right to death and resurrection are used in this meaning. Sometimes, right means truth of a statement or order and its accordance with the reality. Right sometimes is used vs. wrong that is often used in such meaning in debt texts. The right sometimes means privilege or portion intended for someone and others are obliged to observe it. Other meaning of right in law and on principle is used in plural form; a set of laws and rules which rules at certain period on a society or group (Ebrahimi Dastgerdy, 2009, p. 15) The matters foreseen in the law that if people are allowed to change some of them with their intention, this changeable matters are called "right" such as referent of article 387 BC that can be scrapped in our opinion, i.e. the parties to the contract, in addition to sale contract, can provisions scrap

of waste guarantee of sales before obtaining it between themselves. And also it can be said that it is a property and in this case, against object, religion, profit, exploitation is used, as it is said that the ownership of object, the ownership of religion, the ownership of right, such as the ownership of option and the ownership of property rights (Langroodi, 2015, p. 216). Its exploitation is possible through two possible ways: 1) exploit from the needed property immediately and directly 2) the right owner applies it by another device. Accordingly, the rights that humans have on objects are divided into two parts: objectively right and debt right. (Katouziyan, 2015, p. 14) the plural form of right includes the part right and general right. This term has been used in debt jurisprudence and in the new law of the country.

THE CONCEPT OF RIGHTS

“Salary” means wage and remuneration: For example, it is said that salaries of government employees. It means the wages that they receive monthly from the government. Rights are: A set of rules and regulations applied on community relations at certain time. In other words, rights is a set of Dos and don'ts that the members of a community required to follow and the government is responsible for implementation of them. “Rights” is plural of the word “right” it means privileges and characteristics of each individual of a society that sometimes can be interpreted as individual rights such as the right of ownership. (Katouziyan, 2001, P. 33).

VARIOUS TYPES OF FINANCIAL RIGHTS

Objectively Rights

Object was used in different meanings, including eye, fountains, flashing, etc. In logics, object is applied vs. mind and phrases and writing. In law and jurisprudence, in principle, object is used for benefit, act and right. The definition of jurists of sale as well as the article 338 BC that knows its ownership of same to alternative, has been made for this purpose and separating the benefit, act, and the right of sale contract. It is usual in rights that object is a property which is material and tangible and is transacted freely and not as a benefit from other property. However, benefit is a property which an object is used gradually. (Ebrahimi Dastgerdy, 2009, p. 34) objectively right is a dominance that one person has on an object and can implement it directly and immediately. So in objectively right there are only two elements: 1) the person who is the rightful owner (whether a real or legal person) 2) whatever is the subject of right (Katouziyan, 2015, p. 14). An objectively right is directly applied on his subject and it is not required to other person to implement and observe

it. However, when the right subject is at the power of other, and he avoids doing it, the right owner can demand for denial of the property. Objectively right is a privilege which a person has against something tangible and visible, directly and immediately. You are land lord, i.e. you have objectively right to it. The tenant has objectively right to the rental and can capture the same lease. There are two observable elements in objectively right and one credit relationship. The two significant elements include the owner of objectively right and, the property which is visible and tangible. But what connects the owner and the property is the credit relationship, which cannot be seen, but its effects are evident. Direct relationship of the owner to the subject, i.e. the same object makes others respect the owner's authority and right, and not to interfere in implementation of his right. You have a car switch and you own it, it means you have objectively right to it. Nobody can take, ride the car unlike your permission and interfere your authority to the car and if he interferes, you can stop him, and claim against him. That is why it is said that ownership right is attributable to all individuals. It is an absolute right, absolute in this meaning that all people must respect and observe it. The objectively right holder has the chase right and can chase his property in whom has it and arrest and extradite it. From article 29 Civil Code is about objectively rights including 1-the right to ownership to the object or benefit, 2 –exploitation right including endowment, 3 - easement right (Jalal aldin Madani, 2012, p. 164).

The Concept of Debt Right

Debt right is a right that an individual has vs. another, and thereby, he can ask him to do something. The owner of this right is called creditor or a person who is required is called debtor or beholden. The principle of the right since the esteem of its owner, is the quest, and in terms of debt, is called obligation or commitment and may observe 1) transference of property such as a land owner in pending pledge promises to transfer it with certain conditions. 2) Doing something, such as a commitment to make a sculpture, drawing, doing surgery and cargo. 3) Refusing doing a work: which due that, the debtor commit to refuse doing a certain work, such as the commitment of transferor of key-money right in order not to create business competition on that city or the neighborhood or the receiver and does not establish a similar organization. A person who has debt right can only apply it indirectly and by the debtor on objects and the practical implementation of the right is that it must bound the owed to implement the commitment from the court. (Katouziyan, 2015, p. 16). The debt right is a right which one has toward other one. The owner of debt right can ask him to do a work, a commitment, or sum money. The owner of debt right is called Creditor or holder or creditor or obligee and a person who is required to pay the debt or commitment and work is called owed or debtor.

The origin of right is demand and regarding to debtor is called commitment or debt. The owner of debt right has the right to demand. Debt right may have various forms including money, goods, work and so on. The main and fertile source of debt rights is obligations and contracts, that free will of people is its center. People can regulate private relations based on samples and can benefit from freedom of contract. The principle of freedom in setting a contract that article 10 of the Civil Code and the law allowed it and West rights linked with it, almost gives the authority of all agreement to all types of people in a society, of course, there are some restrictions on the freedom of will and the formation of debt rights. Crystallization of existing laws are responsible for public order. In debt rights the relationship is between one person and the other. A right which someone has on another person, Creditor can demand the implementation of this debt right from a person who is not the debtor, if the debtor does not implement the right (does not deliver the property, does not pay the debt, does not implement the work) the creditor can refer to the court and ask for his obligation, and get a court order to even be able to vindicate his right through the sale of property of debtor. (Jalaluddin Madani, 2003, p. 168 167).

TYPES OF OBJECTIVELY RIGHTS

Original Objectively Right

This right allow person to use and benefit from something, partially or completely, the most complete original objectively right is "ownership" which thereby, the owner has all exploitation and occupation on his land. The right of exploitation and easement are components of ownership and its owner can seize the property limited and take advantage of its benefits. (Katouziyan, 2015, p. 14) Civil law has not listed all rights that people can have toward their properties together.

In Article 29, three types of objectively right have been mentioned. (these rights are called original objectively rights, namely independently and directly have been belonged to something. The house ownership has the fullest objectively rights to the house; the right of habitation in house of the owner object, it has profit-making right, the owner of easement does not own the land of others, and also does not have exploitation right on others' land, but because his land is adjacent to others' land, he uses the exploitation right of that land). When we discuss on objectively rights, the minds immediately figure on these three types of rights. (Jalaluddin Madani, 2012, p. 221).

Subordinative Objectively Right

Thereby, a certain property is bailed out for the right owner and he has the right to vindicate his demand from

it, if the debtor refuses to pay the debt. In this case, the debt right of creditor, due to the bail, turns to objectively right. However, in such cases, the right owner cannot use the property's interests and just priority over the right than other creditors and can chase it. (Katouziyan, 2015, p. 15).

In addition to three types of original objectively rights, in the Civil Code and other laws, other objectively rights have been also presented and stated those rights sporadically. These secondary objectively rights include:

1. The right of creditor to properties of debtor at time of bankruptcy or detention of property.
2. The right of bail on the mortgage and deals with the right of withdrawal. (This category is called subordinative objectively rights and is used as bail for debt).
3. The right of petrification on possession of uncultivated lands, an individual who petrified uncultivated lands and obtain the priority to ownership and capture of the land, of course, it is cancelled due to nationalization of all uncultivated lands, or by circumstances in which the law has predicted.
4. Arable manner, root right, right of collusion, the right of newcomer, priority right, goodwill, right of businesses, these cases have not been mentioned in civil law, as they are not written in judicial references, but some of laws like land reform laws or rules of landlord and tenant, or judicial opinions have supported some of the titles that are rooted in local tradition.
5. The sensible quality of objectively right is that the owner of the right can be directly in the limits of the law of property rights vindicate his rights, and can demand the subject of right that anyone who has it, and he has the so-called chase right. (Jalalodin Madani, 2003, p. 222).

Rights Similar to Objectively Rights

In addition to two groups of objectively rights, individuals can have rights similar to objectively rights to the properties mentioned above, which is a kind of commitments there is distant relation the right owner, in these cases the right owner cannot unlike the previous cases chase the foresaid property, but if the right is damaged due to wasting, he can ask for recompense from the person who caused it. These rights include:

1. The priority is at public possessed in common, for example, you went to the local park at weekend morning and to chose a place to settle and put your luggage on it, while have gone to the car to bring the rest of luggage, if another person does not adhere to your location, you are entitled to demand for loss, if it incurred. Or the owner of a car showroom takes your car that was parked at the edge of the road, a few meters back and pulls his car instead, and then, the fine

leave is issued for your car and you can claim for loss, because he did not observe your priority.

2. Priority of tenant in renewal of lease which has been recognized by law of leasehold adjustment, if the owner does not follow it and rents it to another.
3. Commitment of owner at transfer of certain property to another, if the owner wastes it, or transfers it to the obligee. (Jalalaladin Madani, 2003, p. 223,224).

VARIOUS TYPES OF COMMITMENT

General Concept of Commitment

In jurisprudence and law, the term commitment is used in two definitions. One in its general definition which includes obligation, commitment, condition, tradition, testament, responsibility, and all debt duties and rights that have contract sources. Perhaps on this basis, covenant is considered absolute hoax and agreement. Whether the hoax and agreement are transactional or sincerely and whether they are legislative or statutory. In civil law, in some cases commitment has been used in its general meaning. Fall of commitments in BC was used in the general meaning, including all obligations, such as commitments rise from contracts and obligations out of the contract. Paying attention to provisions 264 BC which led to fall of commitment generally and absolutely reveals clearly this meaning. Or, before 1198 BC, one is obliged to sustain who can afford alimony, i.e. he must be able to pay alimony without being under pressure in his living. In order to recognize the condescension, his commitments and the status of his private life in the society must be considered. It is observed that the term Commitments mentioned in this article has been applied in broader meaning.

Special meaning of Commitment

Commitment in its special meaning means: The legal relationship between two persons whereby the obligee can make the committed to pay a sum of money or deliver or transfer something or to do or leave or act a certain task or it was said that: commitment is a legal relationship which results in transfer a property or doing certain act or omissions or abortion a legal result. (Jafari Langroodi, Encyclopedia, vol. I, p. 909). Some authors have considered the enforcement of commitment in its definition and said that: commitment is a legal relationship which when it is required a certain person who is called debtor has to pay money or doing something for a certain person who is creditor and thereby the creditor can ask for implementation of the commitment and if he does not want to do it, he will be forced unlike his desire. Although we can understand such through mentioned definitions that in fact, commitment is an obligation which the promisor is adhered to it willingly and by this credit he is placed

against obligation which means imposing obligation on a person by law or legal event, but in civil law absolute commitment and obligation, i.e. both commitments which arising out of consent and contract, and non-contractual commitments that are enforced and imposed involuntarily on the person have been considered.

Effects of Objectively rights

1. Objectively right is awarded to foreign objects in debt committed against the debt rights for which the promisor is responsible.
2. Subject of objectively right is tangible and sensible.
3. Actions of objectively right require the right of exploitation and easement
4. Objectively right is documentable vs. all people, in contrast to debt right that is documentable only for obligee.
5. Holder of objectively right has the right of chase, and can demand and chase the property of right subject.
6. The holder of objectively right has the authority to control directly the subject of the right.
7. The holder of objectively right cannot be forced to relinquish his objectively right to another except by law (Articles 31 and 808 BC.) Examples of objectively rights in principles 46 and 47 of Constitution of Islamic Republic of Iran have been mentioned (Eftekhari, 2003, p. 15).

From the perspective of Iran's civil law, commitments of Iran have been predicted as written contracts in article 1304, as follow:

"Whenever a commitment has not been signed in the commitment letter, and is a separate article, this commitment letter is a reason against the signor, "it is stipulated that any commitment or transaction is concerned.

The Effect Of debt Rights

The most important effect of debt rights (obligation) is to value the payment and execution of commitment order and in if the debtor does not pay it, his properties will be seized through the court. The common and natural result of any commitment is that the creditor can demand for commitment implementation from the debtor and if he refuses, the creditor ask the court to force him and confiscate his property and provide the cost of implementation of the commitment, and ask for cancellation of transactions which the debtor done to avoid to pay the debt, which may claim to his deputy. (Katouziyan, 2014, p. 75.)

CONCLUSION

Financial right is a privilege which rights of any country grant to people to meet their material needs. The goal of

financial right is to develop relations that exist between individuals regarding using objects. The financial right is exchangeable and can be appraised to money and is a pillar of assets and is considered property such as ownership, right of exploitation and right of demand for sum money (debt) one of divisions of financial rights, is the division of rights into objectively right and debt right. A objectively right is a right which a person has an authority on something toward another person and can implement it immediately and directly. debt right is a right that a person has toward another and whereby he can do anything he wants. Subject of objectively right is always a certain and external property, while the debt right might observe doing or refraining a work. Transferring a objectively right, without the permission of another person, normally is possible, but transferring the debt is possible only with the consent of the debtor. objectively right is a direct and immediate domination on the property, and is documentable against the debtor, relative and related to the promisor. The most important debt rights effect (obligation) is giving value to payment and execution of the promise and if the debtor refuses, the creditor ask the court to force him and confiscate his property. objectively right (ownership) has three major effects: 1- absolute 2 –exclusive and, 3- permanent.

Which briefly objectively right holder has the right to carry out and perform the material and legal acts. In the scope of debt right it can be said that the creditor can only refer to a certain creditor and his existing asset at time of seize of property, he has not the right to chase, but in the scope of objectively rights he has the right of priority and chase, and ownership is its most complete type and the owner is free in operation or removal or transferring it to others.

REFERENCES

- Ebrahimi Dastgerdy, Ayyob. (2009). Comparing objectively right with debt right. MA thesis. Faculty of Law. University of Shahid Beheshti.
- Imami, Hassan. (2005) Civil rights. Vol. I, Tehran: Islamia press.
- Jafari Langroodi, Mohammad, (2015) Terminology of roghts. treasure of knowledge publication.
- Saidi. Mansour. (2008). objectively and debt rights in Iran and France. Doctoral dissertation Private Law. School of Law, Shahid Beheshti University.
- Katouziyan, Nasser. (2010) Introduction of law, Tehran: Publishing Company.
- Katouziyan, Nasser. (2015) Property ownership. Tehran: Mizan Publication.
- Katouziyan, Nasser. (2014) General theory of obligations, Tehran: Mizan Publication.
- Madani, Jalaluddin. (2003). Civil rights, and general arrangements of property and financial rights, endowed. Tehran, Paydar publication
- Weill (Alex) et Terre' (Francois) (1986), Droit civil les obligations, 4e'e'd., Paris.
- Terre' (Francois), Simler (Philippe) et Leguette (Yues), (1986), Droit Civil les obligations, 6e'e'd., Dalloz, Paris.

How to cite this article: Kheradmand SF, Peyma MS. Investigation of the Nature, Types and Objectively and Debtrights Effects. Int J Sci Stud 2017;5(4):1007-1012.

Source of Support: Nil, **Conflict of Interest:** None declared.