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## STUDY OF THE ROLE AND THE STATION OF BUSINESS DOCUMENTS IN SOCIAL ORDER

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**Abstract:**-The ever-increasing development of commerce and internal and international commercial exchanges and necessity of speed and facility in merchant order and the role that asset flow and commercial exchanges volume have in political and economical destination of the countries, was caused the governments by compiling specific criteria and provisions, provide merchant and businessman security. This security arose from necessity of regulation and arranging in commercial and trade affairs is for securing of the social order. Business documents such as promissory note and bill of exchange and check, with specific features and functions, have inevitably impact on the economy of each country and the social order. This research studies the role and station of business documents in social order and put this important as an itself supposed that business documents have an inevitably impact on the social order and security. The concept of social order as a basis for lubricating and order giving of legal actions is necessitous of compilation of laws that the atmosphere of peace and tranquility cause to flow in society. It is therefore to follow the result of this research is proposed that with updating rules and regulations related to business documents can gave range to improvement of the social order situation in light of the new needs.

**Keywords:**Commercial documents, social order, social interests, legal approaches.

### INTRODUCTION:

The ability to being transferred the financial rights is always containing a condition certainly as "right existence"; in other words, the right that is not, can't be transferred to another, even though both sides have will it. In civil rights, ranging from the written legal system or common law system in accordance with the general rule in contracts, in all cases of transfer of rights, the recipient cannot have rights more than transfer ("Katuzian, 1369, p.76). This rule, which are not mentioned explicitly in the rules, is based on the basis of this logical thought that no one can transfer rights that is not belong to him and on the basis of the completely recognized legal rule, someone who is not owner of something, can not transfer it to another, can be described (Esskini, 1373, p.47). To describe these two principal legal and logical thinking is arose from the necessity of social order, because the tolerance of traces of this rational principle, is difficult when dealing with necessities of the social life of human, especially in economic dimension. On the other hand, it is true that essential to the right transfer is existence of right, but a lot of times, the apparent situation is in such a way that the recipient with full trust to the status quo, a right which is non-existent, has supposed existent and in exchange for that, he pays a substitute; in this case, the recipient's trust to the appearance situation, is not existing the right of non-existing, but it paves the way for desire to this opinion that individuals underlie this trust were responsible for responsibility in front of the recipient which is equivalent to the non-existent right (Esskini, 1373, p.94). In such circumstances, what guide lawmakers to the right option is not necessarily attention to the rights of individuals one by one but also it must be take into consideration the community

1 - Written legal systems

2- Common law system

order and interests as an independent existing of its members and put the preference criteria the community's overall interests; this interests means in light of the provision of community order. Commercial documents of the successor of money (with commercial documents in a particular concept) is representing the religious right now or with the short term promise that its subject , is a certain amount of money that check, promissory note and bill of exchange are reckoned of its obvious evidences. Businessmen and economists are always interest in the above mentioned documents can play an important role in brisk up the credit transactions and easy and secure transfer of wealth. Hence, during the transformation and development of the rules governing on the commercial documents, part of the money properties has infected to these documents; including that make the acceptor of these documents must have confidence on that the inaccuracies of the previous document transfers (transfer-seeking) will not affect on his rights because otherwise, several transfers of commercial document is leaded to more undermine and destabilize of its holder position (Allah Abadi, p.24). The rule of » objections can not be invoked « is a rule contrary to the General rules governing on civil contracts, with this contents that document committed (owe) can't defense in front of the holder of the that been the observer with the originator to his relationships and others. The main philosophy of this rule, is creation of trust towards the validity of these documents because if the document undertaker can rely on to all faults arising from its relationships with previous hands against current holder, no other confidence to collection is left and merchants vain effort to refuse of accepting these kinds of unstable documents . The deprivation of the benefits of the circulation of these documents and to the same extent the existence of social order. Determination and diagnosis application of commercial documents and its evidences is require to full understanding of the regulations, the principles and rules of govern to them until with understanding of the rules and laws while performance of the legal principles will can help to of social order arose from the operation of these documents.

**The concept and foundation of principle of the lack of the ability of supporting to errors in commercial documents and social order:**

It seems representing a comprehensive definition and preventing from principle of lack of the ability of supporting to errors in front of the holder in good faith of the commercial document, as the definition of often legal phenomena is difficult and but also impossible; hence, in order to brief introduction to the principle, the definitions is represented , regardless of the criticism that might involve towards each, in this regard, at first some of the existing definitions selected are represented in domestic laws and international treaties and lawyers delivers:

**1. Legal Definitions:** the Geneva Convention article 17 is defined the principle of the lack of the ability supporting to errors in this way: people by virtue of bill of exchange were fought against them, can not support against the holder of bill of exchange to their private relationships with drawer of check or the previous holder of bill of exchange; unless the holder, when receiving of bill of exchange would been act awareness in loss of debtor.

As well as the Geneva Convention article 77 regarding to the draft and promissory note, know current the mentioned principle about promissory note, in addition, the Geneva Convention regarding to the check in provisions 22, has repeated the substance of the mentioned Convention provisions (Shahin, 1370, p.43) .

**2. Definitions of Lawyers :** in some definitions, a limited territory of the original has been under the supervision and its application has been only confined to the instances that there has been transactions among commercial document sequentially transfers and possessions are not rely on trading such as finding the document, theft, etc. were been known outside of the principle inclusion, including: commercial documents itself represents the quest of its owner and the Legal Affairs which may exist between the signatories and the endorsers and the claims that every one of them has over another about a deal that has led to issuance of the commercial document, does not have affect on the rights of the commercial document owner. (Akhlaghi, 1368, p.28)

Draft undertaker , promissory note or check, because of signing of these documents in front of the holder of the document is committed and can not in front of him invoke to his personal relations with the document transferor; in other words, the draft undertaker in front of the holder of it can not resort to errors that could propound against the transferor –with a view to transaction that because of it , the draft document was been issued and flown-because the draft commitment is separate and independent of the obligation resulting from the original deal.(Esskini, 1384, p.6)

**Iranian rights approach to commercial documents:**

The legal establishment of commercial documents and its specific and new provisions has been comply with complex business needs of today and the desired social applications of it in trading and legislators as well as with the necessary supports of the holder in good faith of the document was been caused to the document firmness and make sure of the holder of it. Establishment the principle of independence signatures, the principle of the responsibility of guaranty of signatories the principle of not being invoked the errors, particular attention to form and document formal conditions and as well as the granting of privileges in the case of these documents by the legislator,

all is taken in good faith of document to support the beneficiary rights. Civil law in spite of its being comprehensive, does not have predicted such provisions in the specific manner, of course, so expect of Civil law as well as which is speaking of all regulations and the rulings related to the new legal phenomena in various fields, especially when its application and international aspect is propounded, does not seem rational (Esskini, 1373, p.58) . Of course, it is necessary to mention that as a general rule the private Iranian rights was been rely on support idea of the owner and in principle goodwill and trust in appearance , does not have effect on taking possession and the principle of lack of the ability of supporting to errors in Iran is lack of the legal reason and judicial procedures as well as is unstable towards it; thus the doctrine is the only reason for proof of principle in Iran's rights and for determining the principle scope in Iran's rights, the 1930 Geneva Convention is the most suitable rule for compensating of legislator. For a better understanding of the subject the following cases is notable:

1. understood of materials 310, 312 and 314 business law is this the exporter of check, funds have by the side of the other, by virtue of it can refunded personally or to another person others, in any case, its exporter is known as an abandon of check fund and the responsible of fund payment in case of refusal is the drawee of the payment. Of the total materials was used that the check is to the order of the positive carrier of payment transference and that the exporter , is indebted to its holder and the guarantor of payment check fund, in this case, the title merit of the check exporter refund from the holder of the check would be contrary to understood of the aforementioned materials .
2. Contributes to article 230 commercial law and other legal materials related to promissory note and the draft , the demand of lack of employment for debtor of promissory note has no effect on falling of him that did it because of the promissory note.
3. Pursuant to articles 249 and 309 commercial law an individual who has given the promissory note, is responsible in front of the holder of the promissory note and his objection (as in promissory note to the endorsed) will not be imported.

#### **The benefits of business documents:**

The benefits of commercial documents will generally mean in relation to the social order. Commercial benefits have exclusive merit that some of them are as follows:

**1. Joint and several responsibility of signatories of business documents :** Joint and several responsibility is branch to plurality of particular and general responsibility , when it can be assumed the joint and several responsibility that at least two of them be responsible. In the Iranian legal system, which is based on Imamiyeh jurisprudence, if two or more persons are liable in that two or more persons are involved in the issuance of documents and their responsibility is relative and joint. Sometimes, this ratio is determined by law (Sotoodeh Tehrani, 1375, p.68) . Of course it is necessary where, the two parties have determined the contract about the extent of liability in accordance with the principle of will sovereignty of this mutual consent if within the framework of the law, was in accordance with article 10 of the civil law and had the other terms, it is correct and worthy of respect. Here it must be mentioned that the joint and several responsibility is completely the exceptional and should be the legal special text until we know the joint and several responsibility and our documentary is as well as article 402 of trade law that says: the sponsor when has the right to demand guarantee that refer to main owe primary and he refer to him in the case of collection of request that this arrangement was being prescribed between the parties, whether meantime the special contract, whether in the warranty (Katuzian, 1370, p.68) . The legislator in article 249 trade law also have explicitly known joint and several the responsibility of signatories business documents; the holder of the document can refer to any of responsible and in the case of lack of receipt is empowered that all or one of them or many people put the claims read that this is a huge advantage that the legislator is known for the owner of the documents. These cases indicate that the joint and several responsibility for the collective commitment and responsibility have a firm relation with social order. It can be said that the commercial documents having the joint and several responsibility have direct relation with social order.

**2. Stability of the supply demands:** the owner of the check or promissory note or draft can be as soon as the petition presented and before the start of investigation demand the banning of the property debtor and the Court in accordance of his appeal export stability of the supply about the size of what it is supposed to supply demand if the ruling was issued in favor of him to be able to use his right. Trade law article 292 states: after adducting the claim lawsuit is obliged the Court for demand the holder of draft that due to lack of payment has protested arrest equivalents of draft from property of defendant.

**3. In the courts only rulings that found finality, are executable.** According to the law of civil procedure rulings that are exported from the revision reference are definitive and executable, but in commercial documents in order to prevent probable losses, law have prescribed if the claim would be supported by commercial documents during this period the provisional enforcement is possible. Of course, in general a series of measures in order to protect the rights

of the particular judgment debt that sentence of irrational was been issued in the interests of him are done.

4. Commercial documents for social order protection are introducer of its owner request and legal relationships that might be exist between signatories and endorsers and the claims that every one of them over another has imported about the deal was been culminated in issuance of commercial document , in the rights of the owner of commercial document does not have impact.

**5. The ability to transfer:** due to lubricate and social welfare of the holders of these documents usually transfers to the order of carrier with delivery and to the order of particular person takes place with endorsement .

#### **The position of commercial documents:**

The document in word is something which they trust to, the written that fixes loan or demand of somebody or proves a matter. (Amid, 80, 1381) in legal terms as well as commercial documents are documents that use for payment of money in the head of near time or in specified time of limit and short that their most important types are the draft, promissory note and check, and documents bearer and dock warrant as well as are from this kind. (Sotoodeh Tehrani, 1375, p.27)

Pursuant to article 1284 of the civil law, the document is consist of any written that in claim or defense position was able to invoke and pursuant to civil law 1286 and 1287 materials the documents are two types: ordinary and official. Only documents are official that in real assets and register office or in notary offices or by the side of other officials about their competence and in accordance with the statutory provisions were been regulated and to the stipulation the article of 1289 civil law except the documents that their specifications was mentioned in the article of 1287 civil law , the rest of documents are normal. So because the commercial documents do not have the mentioned features for official documents are included in normal documents. So naturally from the benefits of formal documents in which was prescribed in the article 1284 civil law and after it ,will remain without interest (Akhlaghi, 1368, p.50) . In spite of that business documents are included of normal documents , but have benefits compared to the normal documents that for these specific features business documents are distinct of normal documents ;so people are believed in more credit for them ,meantime because of commercial documents are distinctive of other normal documents the legislature has anticipated formalities for regulate and issue them and if a document does not have the mentioned conditions , is not considered the commercial document and Will not use of preferences of these documents. This importance of official documents was caused to great impact on social order. Trade law of Iran have not provided a definition of business documents, but for each of the kinds of them have been set cases in the law of trade and special rules. The main types of business documents are: a draft, promissory note, check, dock warrant formal, stocks and the loan sheets. Some in definition of the business documents have said business documents in the general sense all documents that are transact between merchants, but in the certain sense it is said to the documents that have transmissible and are comprising of the order of payment a certain amount to sighting or short-term maturity and settle the payment means instead of money and subordinate of special legal privileges and provisions (Sotoodeh Tehrani, 1375, p.64) .

#### **The characteristics and nature of commercial documents in the social order:**

The commercial documents are enjoying of features and nature that have followed confidence to them and in accordance with security and social order put in light of the sure use of it. These characteristics and the nature are as follows:

**1. speed in transactions:** the principle of speed is necessary to trade, because the conclusion of contracts and its performance is need to speed and every amount of capitals faster circulate to the same extent the commercial or services companies and other economic firm are more active and consequently the welfare and order of the community will be secure better. Undoubtedly the severe rules derange the merchants and businessmen peace and because the rules of civil rights have less flexible in contracts, so they provide economic affairs stagnancy. Because to facilitate the circulation of wealth and of the fact that civil rights with respect to dangers that is in commercial profession and seek uncounted support can not role play well ,so it should be perform the special rules of trade law that for creating necessary speed have the legal structure easier than civil rights .

**2. Strengthening credit:** commercial documents are suitable and easy means for acquisition of the credit and the speed principle is not alone able to secure of trade rights purposes. Because the speed is always associated with dangers, therefore strengthening the credit and supply of security have an important role for the businessman. Merchant that buy a commodity and the factory owner that prepare the commodity does not have enough money when buying the commodity or the raw materials , therefore he is resorted to a draft and promissory note and in this way obtains the credit. Of course, he can earn credit with the discount and to spend. (Kaviani, 1377, p.69)

**The challenge of commercial documents and social order:**

One of the important factors of regulation of various relationships of people society with each other are documents that people trust them and if this trust and confidence of people society is taken away to the regulatory documents, security and social order and social relationships of that society will be faced with disorder. So keep and observe of the provisions accuracy and their content for arresting the public trust is necessary and essential. Forging a document by using of it had close correlation and in fact the practice of forging the document is taken into the introduction of misdemeanor of using unknown document and also is taken into complementary and forging the document was for using of it and the forger in document forging is following his ultimate goal which is exploitation of unknown document. The other important point is that forging and using of unknown document in addition to the mentioned instances have reciprocal impact on the creation of misunderstanding traces and propagandas in the society, the indirect impact of them is also obtained in the professional criminals use of these documents for the sake of attainment the criminal objectives that put the social order undergone a challenge and tension.

A quarter century is passing of Trade Act of Iran, yet the commercial documents to particular words (draft, promissory note, check) don't have open its place completely in business processes and only the check has able to more use by. Commercial law in the field of business documents has not been able to completely eradicate all the relevant provisions clear and applicable and in this way improve the social order.

**Commercial credit and social order:**

Commercial documents for the purpose of providing social order in the legal and lawful system of any society have an undeniable role. Naturally, each transaction is enjoy of the specific circumstances that this important is also ruler in the business documents. Basic terms of each transaction are formatting the intention and consent, the parties capacity, the particular topic and constitution to the deal and the absence of any one of these is in company with invalidation or non-penetrating every transaction. Whenever a transaction was been void and its document was been located on the transfer case, because the transfer to the carrier has not legally prove to be true, is considered invalid (Katuzian, 1380, p.67). Of course, in the field of trade, these principles are not compatible with the rules of commercial documents. Common basic of orders cannot be current in the civil and commercial documents, but should be that commercial documents as well as naturally are considered in general legal principles and in terms of nature their adjustment is subject to the basic conditions for the accuracy of the transaction and providing social and legal order, but the lack of observe any of these conditions is not caused to invalidation or non influence of commercial document. In the realm of business rights when a commercial document was put on circulation current, the lack of any of the basic terms will not be cause of credit privation of commercial documents and responsibility of the other signatories.

**The result of the discussion:**

According to the items that were stated about study of General rules contracts in commercial documents, it can be said that with regard to the ever-increasing development of trade and extending economic relations, whether in the internal level or international level, the trading documents every day have more importance and role in the circulation of wealth and economic development of the countries. Even the application of check has increased to the extent that is used among people sometimes as a noncash payment means and for removal of problems arising from un monetary and ultimate payments and sometimes it is used as an ensure of obligation performance or in order to secure credit even in banking system. Most use of the commercial documents is need to exploitation security, and this issue has a direct relationship with the social order of society. Commercial documents are containing of shaped conditions according to the commercial law and the natural conditions according to civil law. Issuer of the commercial documents with the signature or stamp for draft and promissory note and the signature for check is stating his intention and consent, if it was been lack of legal capacity and he claims of ignorance, doesn't have the responsibility, but the responsibility of the other signatories is remain in its force. As well as the condition of increased and reduction of responsibility in commercial documents was been accepted and damage resulting from lack of perform the obligation inserted with the document should be compensated. The obligation in the interests of third party in Commercial document is effective among those who have committed it. Commitment and responsibility in the use of commercial documents is double the necessity of right and legal protection of exploiters. Hence, it is necessary that the legislator take steps in order to edit of a full law in the field of commercial documents until creates a dynamic community, a regular commercial with full security and security of appropriate social order.

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