



A Comparative Study of the Effect and Scope of Prohibition on Assignment of Contractual Rights in Iranian and England Law

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Abstract

The prohibition of assignment is a fundamental aspect of contract law that has been subject to considerable debate and discussion in common and civil law legal systems. While both legal systems recognize the principle of freedom to contract, they often take different approaches to the prohibition of assignment. In common law, there are two approaches to the prohibition of assignment: the contractual approach and the property approach. According to the contractual approach, the agreement of the parties will not be able to eliminate the transferability of the rights, and therefore, the adverse assignment will be effective to the extent of the agreement between the parties, but not beyond that. On the other hand, according to the property approach, the mentioned right does not have the definition of transferability from the beginning of its realization, and therefore, the adverse assignment will be null and void. Some argue that the property approach is more compatible with the rules governing assignment rights and commercial purposes, and therefore, has gained more support and popularity over time. In Iranian law, with this extent, assignment rights have been examined and assignment cannot be divided into the two mentioned categories, but in Iranian law, if the condition is the result of the prohibition of assignment, according to the general rules of contracts, if assignment takes place despite such a condition, one It will have three effects; Either this assignment is invalid because the mentioned right did not exist, therefore it will be negative to the end of the matter, or it is invalid and requires conditional permission, or it cannot be invoked against the conditional (contractor). Therefore, the effect of this condition is also disputed in Iranian law. It seems that the latter effect, that it cannot be relied on, has a similar result in contrast to the conditionality with the contractual approach and the theory of nullity of assignment with the property approach. The scope of the non-assignment clause is also discussed. In common law, it is clear that the effect of the prohibition of assignment can be extended to other similar contracts that have a similar effect, according to the real intention of the parties, and therefore prevent any direct legal relationship between the obligee and the third party, or in the absence of The existence of a presumption on the actual prohibition is only effective to the extent of the assignment itself, and should not cause the prohibition of other institutions. However, In Iranian law, the inclusion of a condition prohibiting assignment in the form of a



condition abandoning a legal act, is better to be interpreted according to the real intention of the parties, and therefore, if there is a presumption of the existence of a real prohibition, it will cause the contract to be invalid, just like the condition of a negative result. On the other hand, otherwise, it will only be effective to the extent of the assignment itself, and should not cause the prohibition of other institutions. In other words, according to the theory of irrevocability, by including the condition of abandonment of the legal act in the contract, the obligee will only have an obligation to perform towards the obligor, and on the other hand, since a valid contract has been realized between the obligor and the third party, the obligor must also benefit from surrendering the right to a third party. In modern business practices, the non-assignment clause is very common, and its scope has been studied and analyzed by many scholars. According to some experts, the scope of the clause should be expanded to other similar contracts that have a similar effect, according to the real intention of the parties, and therefore prevent any direct legal relationship between the obligee and the third party, or in the absence of The existence of a presumption on the actual prohibition, just like it is in common law. On the other hand, there are those who argue that the scope of the non-assignment clause should be limited to the assignment itself, and should not cause the prohibition of other institutions. In conclusion, the prohibition of assignment can be seen as a legal tool that serves important policy goals in many legal systems. However, there are different approaches to the prohibition of assignment in common and civil law legal systems, and Iranian law has its own unique approach. The effect of non-assignment clauses, their scope, and the real intention of the parties are key factors in determining the validity and effect of the clause in both legal systems. In addition to what has already been discussed, it is important to note that the prohibition of assignment is just one part of the larger issue of transferability of rights. While it is clear that the transferability of rights is an important element of contract law, it must be balanced against the rights of the parties to the contract and the policy goals of contract law. The prohibition of assignment can serve important policy goals, such as preventing parties from taking advantage of the rights of others without their consent, or preventing third parties from interfering with the performance of the contract. At the same time, it is important to recognize that the prohibition of assignment can also be an obstacle to the free transfer of rights, which is a key element of contract law. Therefore, it is important for courts to strike a balance between the policy goals of contract law and the rights of the parties to the contract, when enforcing the prohibition of assignment. In conclusion, the prohibition of assignment is a complex and multifaceted issue that touches on many important elements of contract law. While different legal systems may take different approaches to the prohibition of assignment, it ultimately serves an important function in protecting the rights of parties to the contract and ensuring the smooth functioning of commercial transactions. At the same time, it is important to recognize the need for balance between the policy goals of contract law and the rights of the parties to the contract when enforcing the prohibition of assignment.

Keywords: Prohibition, Assignment, clause, equity, Transfer of Right.



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