The Crime of Transferring Others’ Property: Their Features and Conditions

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INTRODUCTION

The principle of "taking others’ property is illegitimate", as one the established law principles in Qur'an, serves as an expression of one general principle of unlawful acquisition and financial exploitation of others’ property. According to such principle in our jurisprudence and legal standards for others’ property financial transactions without legal authorization, both the civil enforcement guarantees, "invalidity and non-trading", and criminal guarantees "others' property transfer" are predicted [1].

In the Iranian law system, "others’ property transfers" was criminalized for the first time in 1923 specifically as "the law of transferring or ownership other people’s property and their punishments" and then in 1929 which was entitled as "the Penal Code relating to transfer of other people’s property" [2].

The totality of law, scientific research and practical flaws in answering the proposed questions in this research such as:
1. Can the absolute property both movable and immovable and materialistic or unmaterialistic be included in the issue of others’ property transfer?
2. Is it a crime that the proprietor's any intervention on his own property violates the rights of others?
3. Is it a crime to transfer unknown and no owners’ property?
4. Is it possible to transfer the shared property like the others' property transfers?

The questions above pointed to the significance of the study. This paper adopted a descriptive-analytical approach to identify ambiguities and legal issues surrounding the issue and to investigate the laws and regulations and finally providing logical and constructive solutions to improve the criminal justice system and the judiciary in Iran. At first the concept is identified, then, a definition is provided for the crime and in the end, the property features and conditions is proposed.

Defining the concept:

In this section, to clearly understand the issue, the implications of each issue of crime, property, others’ property transfer attributed to the others’ property transfer crime is investigated [3].

The issue of crime:
The issue of crime is something committed by a person encompassing the loss or failure that occurs to the whole or part of it. The issue of crime here is referred to as "property". So the crime committing is applied to the transfer of property owned by others [4].

Property:
The term "property" is an issue in civil rights, and has the principle of civil rights which can be defined as anything that is naturally or legally or religiously traded and exchanged. Objects which are considered as "property" in civil rights will be the issue of crimes against property from the perspective of criminal law. But regarding the things that are not considered as property in the Civil rights, the following should be considered:

First, objects that are not traded and exchanged naturally (such as atmosphere, sunlight, etc.), and legally (including alcoholic beverages, and play equipment and toys, etc.) are not considered as crimes against property in criminal law [5].

Second, the objects that are not interchangeable based on the rule of law such as public property, opium and prohibited guns, although in the civil law because people cannot own it, they are not considered as property, but such objects are owned by the government and are eligible for this credit property, so the issue of Crime prevails here.

Transfer:
Transfer refers to the ownership loss of the proprietor's property to the new owner's interest that the original proprietor's ownership will be cut. Transfer is twofold: 1) proceed by transfer; such sale 2) Non-proceeded by transfer, such as transferring the remaining property to the heirs of a deceased [6].

Others:
The term "other" in others' property transfer crime refers to the property owner that may be real or legal person.

Definition of the Crime:
According to the provisions of the examples cited in the article one of 1302 and 1308 law, the others' property transfer crime can be defined as "the transaction accompanied by ill-will on transferring the property or the interest to a third party without an official permit " [7].

MATERIALS AND METHODS

The features and conditions of the property in others’ property transfer crime:
Based on what was noted, the concept of property was established from the perspective of civil and criminal law. Now we must find out whether property in the issue of others’ property transfer crime is expected to have certain features and conditions to be considered in the issue of others’ property transfer crime or not. In general, it seems that property in such crime should be based on these features and conditions such as being movable and immovable, materialistic, being tangible, profitable and belonging to others [8].

Movable and immovable:
The word "property" is defined in Article I of the 1308 law, therefore, the issue of others’ property transfer Crime refers to either movable or immovable property.

Being tangible and profitable:
The property is divided into three categories:
1. The tangible property. 2. The profitable property. 3. The person’s authority. The criminal law in the case of others’ property transfer does not include the authority to transfer besides the profitability and the tangibility of the product because the words "tangibility and profitability" in Article I of the 1308 law clearly imply the issue of transferring the tangible and profitable property. Although the authority is different from tangibility, profitability and responsibility such as the copyrights and patents right, it cannot be included in to others’ property transfer Crime in Article I of the 1308 law because it is neither tangible nor profitable [9]. Although it is possible that the property transfer to another person without the legal grounds and with ill will to be the subject of other criminal topics, such as the illegal acquisition of property in Article 2 of the Law of punishing perpetrators of bribery, the corruption, fraud passed in 1988.

Being materialistic:
The Iranian Civil law does not provide any definition for the materialistic and non-materialistic property. However, material properties are properties that can be touched, such as tables, chairs, houses and so on. But
non-material properties are properties that do not have any materialization outside, but the society has credited them such as copyright and patent laws. Following two arguments below, it can be deduced that the Crime subject of article one of 1308 law merely refers to "material possessions" because, firstly, the legislator at the top of Article one of 1308 law has emphasized the "tangibility and profitability" as the materialistic properties. Secondly, the phrase "being considered as dishonest" in the following article, we can see that committing a Crime is conducted in materialistic assets. Therefore, non-material property cannot be the issue of Crime in the case of others’ property transfer, unless they possess the material properties, such as patents and copyrights or CDsand films [10].

Properties belonging to others:

One common element of all crimes against property and the ownership of a material and in the act of Crime realization is the case of "property belonging to others". The condition "property belonging to other" consisting of the following two characteristics: (1) lack of property possession and ownership to the transferor and the transferee and 2. The property has an identified and true owner

Lack of property possession and ownership to the transferor and the transferee:

"Belonging to others means that the transferor or the transferee has no ownership of the property when transferring. Therefore, it is necessary that the perpetrator is someone other than the true owner because using the ownership right is allowed for the owner. Sometimes, as the real property is in the owner's ownership, but somehow because of the contract such as rent, mortgage, or pursuant to judicial or administrative order, the ownership of a property belongs to a different person. In this regard, the following questions arise of whether in these three cases, the perpetrator's behavior (the proprietor) will be the subject of crime in others’ property transfer or not.

The mortgaged property:

As an example, if a person "A", as a mortgagor, gives his property (whether movable or immovable) to person "B" to ensure the fulfillment of his obligations, and B, with a full knowledge of the non-fulfillment of obligations, rents or sellsthe property to "C" and "C" accepts the transaction knowing that the property is mortgaged. The question is whether such behaviors will be referred to in Article 1 of Law 1308 as the crime in others’ property transfer or not. Article 1 of the 1308 law does not cover the behavior of “A” because the main condition in the fulfillment of others’ property transfer is that the ownership (tangibility or profitability) of a property belongs to someone else [11]. While in mortgage contract, the mortgagor’s ownership for the same property is still existing and the mortgagee has a relative right to the property. So in practice, this assumption is not a criminal act and can be classified as a civil enforcement.

The rented property:

If the contract is arranged for one year and some requirements are predefined for the tenants in the contract not to manage and transfer the lease and he has regardless of the condition transferred during the term of the contract to a third party, the tenant behavior is not subjected to the law of 1308 because the tenant is the owner of the rented property interests, therefore, his action is not a criminal case and only has civil enforcement. Of course, the landlord can ask the court to order termination of tenancy or eviction. If the tenant has the right to transfer the rented property to another person "in excess of the initial lease term", his behavior is a subject of Article 1 of the 1308 law as the tenant has the benefit of the rented property for a pre-determined time but not for the excess of the initial lease term. With an ill will, if the tenant sells or otherwise conciliateson the rented property, since he has no ownership of the leased property and he committed an illegal action.

Seized property subject of legal and permitted prohibitions:

Property belonging to individuals or objects (either real or legal) that is seized by the command of authorities (relating to property and objects that are offended by the topic or study) would prohibit the owner from any manipulation of the property. What is meant by the intervention and occupation? And financial or legal?

It seems to include both legal tenure, such as the sale and donation of the seizure and the financial ones such as theft and displacement of the property. So any interference or seizure of the confiscated property as being inconsistent with the closure” aligned with other conditions are subject to Article 663 of the Penal Code of 1375 law. According to the article: "Whoever knowingly occupies and intervenes in objects and properties confiscated by authorities without the permission which is inconsistent with the closure of the case even if the owner is the occupier, he is sentenced to an imprisonment from three months to a year. Therefore, the seized property selling by the owner is not subject to others’ property transfer is not a criminal act because there should be no ownership for the transferred property.
Having the true owner:
One of the attributes of the others’ property ownership is the fact that the property has a true owner, that is, a property without owner though the owner’s identity is not important to commit a crime. Sometimes the property does not have a true owner or the owner is unknown. In this regard, the following assumptions are presented:

Public property:
Public property are properties that are owned by the public in accordance with Article 23 of the Civil Code their application requires the laws relating to them and no one can seize the property preventing others from using it. Considering the articles 24 and 25 of the Civil Code, the legislator explicitly prohibits public property owned by individuals. So, it seems that if the public properties owned by individuals are in compliance with relevant regulations, it will not be considered as a criminal act. If it is not in accordance with laws, due to being considered as public funds consistent with Article 45 of the constitution, the government owns the property, and if someone tries to sell the property, he is in fact transferred the government’s belonging and such behavior was associated with the crime.

The permissible (Mobah) properties:
According to Article 27 of the Civil Code, the permissible legitimate properties are the properties that do not belong to a certain preoccupied owners and people can make these properties as their own based on the rules and regulations relating to the acquisition of the different property types. Land and water are the most enjoyed permissible properties to which people show the highest interest. Permissible properties can be taken into one’s possessions through “Heyzat” (taking possessions of the properties belonging to no one particular) which must be in accordance with relevant laws. Considering such description, if someone is allowed to attempt to transfer the property, is his behavior a criminal act? To answer the above question, it seems that the property transfer should be considered and separated based on the classifications of “before Heyzat” and “after Heyzat both legally and illegally”. Hence, there are two assumptions:

First assumption:
If the person before Heyzat, transfers the permissible properties to another, the commit acts with all circumstances, is an act of offense following the legal reasons: First, regarding the provisions of Article 147 of the Civil Code, a pre-condition for lawful ownership of properties is “Heyzat” and the first person who take possessions of a permissible property “Heyzat” will be considered as the owner. Second, based on the Article 45 of the constitution, permissible properties such as uncultivated or abandoned land are owned by the government and it is illegitimate to consider them as lacking the owner.

Second assumption:
The person transfers the property after Heyzat that is two-fold:

RESULTS AND DISCUSSIONS

First: Heyzat is legally conducted, such ownership implies the property ownership of the person, then, its transfer to another person is not a criminal act. Second: Heyzat illegally conducted. For example, the Environmental Protection Agency has issued a license to hunt the birds for the hunter, but the hunter seeks to hunt deer. Such act of Heyzat would not bear any type of property ownership; therefore, such transfer is considered a crime.

Unknown owner property:
Unknown owner properties are the properties that were formerly owned by persons who did not grant a waiver there is no clear disclaimer, but somehow the owner is not known. In transferring such properties, the owner must clearly identify his plans disclaim the property. Therefore, two assumptions are considered. First, when the owner “absolutely” disclaim his property, which is twofold:
A. Complete renunciation of property, as conducted “naturally and voluntarily”. Such renunciation will put an end to the property ownership and it will be in the realm of permissible properties; and in accordance with Article 147 of the Civil Code, the first person who possesses the property “Heyzat” will be the legal owner of the property, so it is not a crime to transfer the property since assuming the owner is out of the question.
B. The absolute renunciation of property, as conducted “abnormally and involuntarily” and in times of crisis, such as war, floods, earthquakes and so on. Abandoning the property will not put an end to the property ownership, and seizing such property will be considered a crime, and claiming the owner’s renunciation will not resolve the issue.
Second, the owner’s renunciation of the property is “relative.” In this case, since the owner is not excluded, so such behavior is a crime despite all the conditions. Results: regarding the three assumptions of (1) transferring the public property without considering the laws and regulations (2) transferring the permissible properties before conducting “Heyzat” and (3) transferring the permissible properties after conducting “illegal Heyzat”, and based on the following three arguments, it seems that the person’s behavior cannot be covered by Article 1 of 1308 law in transferring other’s properties: First: considering the appearance and contextual words (transfer, property) included in Article 1 of others’ property transfer in 1308, suggest that in “others’ property transfer”, a particular person must own the property. Second, the rule should be interpreted in favor of the defendant and the restricted interpretation of penal provisions is appropriate. Third: According to different civil code articles (24,25,26,27), the unknown owner properties cannot be legally owned or transferred and for permissible properties, as if “Heyzat” is conducted illegally, it does not bring any ownership for the person. However, the claim above does not mean that such person’s behavior cannot be treated as a criminal act in the above-mentioned assumptions, because these assumptions may be subject to certain criminal titles (like utilization of water resources without a license subjected to Article 45 of fairwater distribution Law passed on 16.12.1982, or hunting animals, hunting without a license subjected to Article 680 of the Penal Code) and illegal acquisition of property.

**Transferring joint properties:**

Any physical possession of the property shared by the partners, if it is intend to harm and conducted by ill will shall be punishable based on the following argumentation:

A) With respect to explicit legislators’ positions on 581 and 582 of the Civil Code on the prohibition of any material seizure by the partner in the joint property without permission and illegal and illegitimate of such possession

B) The legal and logical requirements demands for coordination between criminal and civil enforcement and the lawmakers’ reference to explain and determine the need to clarify some of the issues and legal implications of the law including the business law on bankruptcy as well as civil law such as occupancy of the shared property by the partner.

C) The need for maintaining public order and social interest.

D) The Supreme Court voting issued by the General Council No. 10 dated 21/7/1976 on charges of destruction of shared property complying with civil law context.

E) The need for equality and justice

Considering the legal possession of the joint property by the owner, it seems that there are three assumptions:

First: owner transfers the shared property "his own share" even without the consent of the other partners. Likewise, such behavior is not an act of crime. Based on the advisory verdict of 7/2652 dated 07.10.1992 and 7/7293 dated 04.11.1995, if a partner intends to sell his share of a joint property and does not intend to transfer the shares of the other partners, it is not a criminal act; such as an heir which has received an inheritance of a joint property like a house, if he sells his share, this does not bear any punishment. However, if he intends to transfer other heirs shares, his behavior will be referred to as a criminal act in transfer other people’s property.

Second: one owner of a joint property transfers the property beyond his own share. In this case, the transferor’s act is completely covered by the Article 10 of 1308 law. The recent part of the advisory verdict of 7/2652 and 7/7293 supports the idea. The third: one owner of a joint property transfers the property to the "presumed or definite share of his own" which has many folds:

1. There is a document proving the size and shares of all partners, and if so, if the act of transfer is consistent with such division in the document, it is not a criminal act.

2. There is no document proving the size and shares of all partners, here, two scenarios exist:

   one owner of a joint property transfers the property of which the different parts were not equal or the value of a part is not similar to the others, if he transfers his share without the consent of the other joint holders, because the rights of others is not considered, the person committed a crime and his behavior accompanied by ill-will is considered a crime. If the joint property has equal components and divisions, the transfer of the shares is not an act of crime. The Legal Judiciary Department in its Advisory verdict no. 73444 dated 19/12/1980 stated that: "Although the transfer of a joint property is not enforceable without the consent of the other partners, but if the transfer is equal to the shares of the transferor and with no ill-will, it will not bear any punishment; otherwise, the transfer can be considered as an illegal act".

**Conclusions:**

In Iranian civil code system, it is predicted that for any rights violations committed against the owners’ or other parties' properties in any transaction (transferring or selling) without legal authorization, if there is no ill-will; the civil punishment on the invalidity or inefficacy will be conducted, and if it is conducted intentionally, the Criminal penalties will be issued for property transfers. Implying from the examples mentioned in the article
one of 1302 and 1308 laws, it can be inferred that this is the issue in others’ property transfer is the "property" having the attributes and conditions of being movable and immovable, materialistic, being tangible, profitable and belonging to others. Non-material assets, such as patent rights, copyrights, etc. are not the subject of such crime, unless they get the materialistic specifications (movable and transferable) such as the rights in a film or on CD. According to our criminal laws, except in the case of "seized property", if it is inconsistent with the seizure, any owner’s seizure and intervention in his property (including the sale of property, etc.), which further exerts kind of right for others, is not a crime, because the owner’s ownership of the property and his profitability is still considered for the owner. The indefinite owners’ property transfer such as, public property, or permissible properties without following rules and regulations, as well as unknown owners’ property transfer accompanied by absolute and relative involuntary disclaimer with all the requirements maybe subject to certain criminal act or unlawful acquisition of property and it is not the others’ property transfer. The joint property transfer beyond the owner’s share is considered a crime.

Recommendation:

Generally, a set of rules that legislator has issued in preventing the others’ property transfer has some ambiguous forms including the complexity of the legal sources related to a crime, or lack of determination on transferring the indefinite owners’ joint and other property types and so on. Therefore, it is recommended that extensive research be carried out by judges, legal scholars and even lawyers and attentive students to identify the legal limitations and the criminalization factors that impede the realization of justice and the have been neglected to fully recognize the crime, and set a chapter in the Penal Code with all the integrated and independent provisions and principles of the issue.

REFERENCES