

Research Article

SALE OF RIGHTS IN DISPUTE BETWEEN SHARIA LAW AND ALGERIAN LAW

Soreya Gherbi*, Abdelhakim Boudjani*

College of Law t, University of Ain Temouchent, 46000, Algeria

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*Corresponding author:

E-mail:

soreya.gherbi@univ-temouchent.edu.dz /

abdelhakim.boudjani@univ-temouchent.edu.dz

ABSTRACT

The sales contract is one of the most important contracts in the lives of individuals and nations, as it is the customary means of exchanging money after the decline of bartering. With the passage of time, the shortcomings of bartering became evident due to the development of industry and commerce, and the varying needs of people. This led to the emergence of the sales contract, as it became a more suitable method of transaction compared to bartering, serving as a common ground for transactions between parties more than bartering. The aim of this research is to analyze the concept of rights sale in the conflict between Algerian law and Islamic law, and to understand the differences and similarities between the two legal systems in this context. Methods Used: An analytical methodology was employed, involving a comparative study of laws and judicial rulings in Algerian law and Islamic law pertaining to rights sale. Findings: The study revealed significant differences between Algerian law and Islamic law regarding the concept, conditions, and transactions of rights sale. Additionally, the findings pointed out some of the challenges and contradictions that arise when applying Sharia principles in a non-Islamic legal system.

Keywords: *Disputed rights, Law, Sale, Sharia*

Introduction

The contract of sale is one of the most prominent and widely prevalent contracts ever, preceded only by the barter contract in antiquity. It is argued that the contract of sale is among the most important contracts in the lives of individuals and nations, as it is the customary means of exchanging money after the decline of bartering. With the passage of time, the shortcomings of bartering became evident due to the development of industry and commerce, and the varying needs of people. This led to the emergence of the contract of sale, as

it became a more suitable method of transaction compared to bartering.

On this basis, sale has become the cornerstone of both domestic and international trade today. It is the natural outlet for meeting people's needs at both individual and collective levels.

Article 351 of the Algerian Civil Code defines the sale contract as follows: 'Sale is a contract by which the seller undertakes to transfer ownership of a thing or another financial right to the buyer in exchange for a cash price.'

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From this definition provided by the Algerian legislator, it becomes apparent that the contract of sale is based on fundamental pillars, namely consent, price, cause, and the subject matter (the object of sale). The latter refers to the right pertaining to the thing among other things. This right may be tangible, such as ownership rights or encumbrances, etc., or it may be intangible, such as in the case of transferring a right, which could be personal, as in the case of the transfer of debt, or intellectual, as in the case of copyright.

The conditions required in a sale are the same as those required in any contractual obligation in general. These include that the subject of the sale must exist, be determined or determinable, be capable of being transacted, and be owned by the seller. Additionally, the Algerian legislator has addressed the regulation of some types of sales, with specific provisions in the second section of the sales contract under the title "Types of Sale". The types of sales covered by the legislator are as follows:

1. Sale of third-party property (Articles 397-399 of the Algerian Civil Code.
2. Sale of disputed rights (Articles 400-403 of the Algerian Civil Code.
3. Sale of inheritance (Articles 404-407 of the Algerian Civil Code.
4. Sale in case of terminal illness (Articles 408-409 of the Algerian Civil Code.
5. Sale by an agent for oneself (Articles 410-412 of the Algerian Civil Code

However, our focus in this study is on the second type, which is "Sale of Disputed Rights", due to its significant importance in the field of transactions between individuals. This type of sale is also noteworthy for its relationship with the judiciary and its practitioners. It is characterized by specificities that subject it to special provisions in anticipation of any dispute or the taking of the right relinquished against it. Special procedures are required for the recovery of the right. The purpose of choosing this topic is to clarify the ambiguities surrounding disputed rights and to attempt to provide a clear understanding of it. Therefore, it necessitates us to address the most significant issues raised by this topic, which revolve around what is meant by

the sale of disputed rights? And what is the legal remedy if the seller's bad faith (speculation) is proven? And what is the prohibited category from dealing with disputed rights? And in general, does the Algerian legislator succeed in addressing this issue?

Through these challenges, we adopted an analytical and critical approach in our study of this topic, relying on the method of analyzing legal texts regulating the subject matter of the study, and then highlighting the legal gaps in legislative texts and attempting to propose suggestions to fill them.

Among the most significant difficulties we encountered during the preparation of this research, we can summarize them in the scarcity of references and sources, and the absence of specialized references addressing the study topic. In addition, the inability to obtain references for Western laws translated accurately.

To answer these questions posed in the introduction, it requires us to divide this topic into two sections. In the first section, we will address the concept of the sale of disputed rights and discuss its definition, conditions, and also explore the right of redemption. In the second section, we will focus on the sale of disputed rights to judicial workers, namely identifying the prohibited category from purchasing, as well as discussing an important point: the lawyer's handling of his client's disputed rights.

Methods
This can be divided into subsections if several methods are described [2].

First Section: Sale of Disputed Rights to Non-Judicial Workers:

The Algerian civil legislation has allocated the first chapter of the seventh section, which deals with sales, and divided it into two sections. The first section includes general provisions for sales (Article 351-396), while the second section addresses the types of sales (Article 397-412), as previously clarified in the introduction.

In this section, we will focus on studying the sale of disputed rights to non-judicial workers. Therefore, we need to study it in two aspects. The first aspect will discuss its concept and the conditions for its realization, while the second

aspect will examine the right of redemption, including its definition and consequences.

First Aspect: Concept of Sale of Disputed Rights to Non-Judicial Workers:

It is known that a right is:

"Every advantage granted by law to a person, protected legally, and has the right to dispose of it lawfully, with the right to dispose of money recognized to him as a rightful owner." Thus, he has the right to dispose of it within the limits of the law, whether by selling it, leasing it, or... etc.

However, this right can be subject to dispute, meaning that it may have multiple claimants to its ownership, and one of them may act in its disposal.

The legal texts governing and regulating this type of sale vary depending on the jurisdiction. However, generally, civil codes or commercial codes often contain provisions related to the sale of disputed rights.

As for the stance of Islamic law (Sharia) on this type of sale, it generally allows for the sale of disputed rights under certain conditions. Islamic jurisprudence considers such sales permissible as long as there is a possibility for the existence of the right in question. However, the buyer assumes the risk in such transactions, as the seller is not obligated to guarantee the existence or validity of the right being sold.

Now, let's delve into the different cases of sale of disputed rights.

First Subsection: Definition of Disputed Rights for Non-Judicial Workers:

A disputed right is a potential right whose existence is uncertain. It may be sold, and in such cases, the sale becomes a conditional contract. If the seller's right is proven, the buyer inherits the sale contract. However, if the right is not proven, both the seller and the buyer lose out.

In such transactions, the buyer has limited recourse, as the seller does not guarantee the existence of the right. The buyer bears the risk of uncertainty regarding the validity of the right being sold. The seller, in turn, is not obligated to ensure non-interference or the validity of the right, as confirmed by the judiciary in its ruling: "It is established by law that the seller guarantees the buyer against any interference

in the enjoyment of the sale, whether the interference is from his own actions or from the actions of others. It is also established that if the buyer is sued for the right of the seller, the seller should intervene in the dispute alongside the buyer. Therefore, any judgment that contradicts these principles is considered unlawful."

The second paragraph of Article 400 of the Algerian Civil Code states: "If a claim is raised for a disputed right or if there is a fundamental dispute over it."

A sale involving a disputed right is considered invalid if it merely claims a personal or real right. When the disputed right is a personal right, the rules of assignment of rights apply to its sale. This means that the disputed right can be personal, real, or intellectual. Article 400 of the Algerian Civil Code, mentioned above, stipulates a disputed right without distinguishing between types of rights.

The stance of Islamic law on this type of sale:

It is established in Islamic law that the sale of deception (gharar) is prohibited. Although this is not explicitly stated in the Quran, it is derived from the Sunnah, rational reasoning, and scholarly consensus. Evidence includes:

- Evidence from the Sunnah: Narrated by Abu Huraira, may Allah be pleased with him, that the Prophet, peace be upon him, said: "He who buys foodstuff should not sell it until he has received it."
- The rational evidence: Since it is logically accepted that selling fish in water and birds in the sky is not permissible, it is similarly logical that selling gharar is not permissible due to the common reason of inability to possess it at the time of concluding the sale contract. Thus, the seller does not own the sold item at the time of the sale contract.
- Unanimous consensus: Scholars and predecessors of this nation unanimously agreed on the prohibition of selling gharar based on conclusive evidence that is beyond dispute and argument.

Since it has been established by religious evidence, as mentioned earlier, that selling "gharar" is prohibited, then selling disputed rights is likewise prohibited due to the

common reason that neither party is capable of possessing it at the time of the contract. Therefore, it can be said that selling disputed rights is religiously prohibited, drawing an analogy to selling gharar.

It can be argued that in order to ensure greater protection of individuals' rights, reduce disputes, and align with the provisions of Islamic law, the Algerian legislator decided to declare the nullity of selling disputed rights.

This is regarding the religious stance on selling disputed rights. We may inquire about the distinction between selling these rights and selling someone else's property, which will be addressed in the following point.

Distinguishing selling disputed rights from selling someone else's property:

There is usually confusion between the provisions of selling someone else's property and selling disputed rights. However, it is worth mentioning that the latter is entirely different from selling someone else's property, although there are similarities between them, such as both involving the disposal of something not owned by the seller at the time of concluding the sale contract.

They differ in that selling someone else's property, as recognized by the Supreme Court, "It is legally established that if a person sells a specific thing that he does not own, the buyer has the right to request the nullification of the sale, and this sale is not valid against the actual owner, even if the buyer approves it."

Since this sale is not valid, any judgment in favor of it would be a violation of the law. The owner of the property has the right to annul the sale contract. This action can be valid in two scenarios:

- If the actual owner approves it.
- If the seller acquires ownership of the sold item after the sale contract is concluded.

This is stipulated in Article 398 of the Civil Code: "If the owner approves the sale, its effects become binding on him and valid against the buyer. Similarly, it becomes valid against the buyer if the seller acquires ownership of the sold item after the sale contract is concluded."

As for selling disputed rights, it is a contingent sale; it may be confirmed for the buyer or

it may not. It can be valid in only one case, which is when the disputed right is determined for the seller.

Selling disputed rights may transform into selling someone else's property if the disputed right is not determined for the seller.

This defines the sale of disputed rights, from which we can deduce the scenarios of selling disputed rights, which will be addressed in the second section. The second branch

Cases of selling disputed rights for individuals outside the judiciary:

Article 400/2 of the Algerian Civil Code specifies two cases:

1. **The first case:** If a lawsuit is filed before the judiciary, provided that the dispute is focused on the subject matter and origin of the right. For example, denying its existence altogether or claiming its expiration for any reason such as fulfillment or the passage of time. However, difficulties posed by the debtor to delay compliance, such as payment after the court's jurisdiction, do not constitute a disputed right because they do not relate to its subject matter.

In other words, the dispute should be about the subject matter of the right, whether it concerns its existence or expiration. If the dispute involves procedural matters, it does not qualify as a disputed right.

The status of the dispute in rights does not end with the issuance of a judgment by the trial court. The right retains this status until all ordinary appeal avenues are exhausted, such as opposition and appeal. Consequently, the status of dispute in the right is dropped after exhausting these ordinary avenues, like an appeal to the Supreme Court. However, if it is indeed appealed before the Supreme Court, the right regains its status as a disputed right.

2. **The second case:** If a serious dispute arises regarding the disputed right, even if it has not been raised before the courts, it still retains its disputed status.

The dispute over the judiciary afterward, as well as the issue of assessing the seriousness of the dispute, is determined by the circumstances of each case and its facts. However, its adaptation to the description

of the dispute is subject to the scrutiny of the Supreme Court because adaptation is a legal issue.

Regarding the content of the right of recovery:

Second Request

Right of Recovery

As mentioned earlier, the buyer of the disputed right forfeits the option, as the seller does not guarantee the existence of this right and sells it on mere claim or a disputed right. The buyer steps into the shoes of the seller. It is natural to consider in assessing the price of this right the strength or weakness of the claim and the likelihood of gain or loss.

Through this request, we will address the definition of the right of recovery in the first branch, its conditions in the second branch, and the consequences thereof in the third branch.

First Branch

Definition of the Right of Recovery

The first paragraph of Article 400 of the Civil Code states: "If a person waives a contested right, the waiving party has the right to demand from the opposing party the actual sale price and the expenses incurred..."

The wisdom behind authorizing the right of recovery from the assignee is to prevent speculation and put an end to disputes. When someone buys a disputed right, they are more likely to speculate on the possibility of winning the lawsuit related to that right. This type of speculation is not worthy of encouragement; rather, it should be combated because it introduces elements foreign to it whose only concern is to profit from it. It is more effective to combat it and limit its harm by granting permission to both parties involved in the dispute: allowing one party who has sold their right to reclaim it and authorizing the other party who has not sold their right to reclaim it from the buyer, thus putting an end to the dispute.

This is what is included in the definition of the right of recovery, leading us to the conditions of the right of recovery.

Second Branch

Conditions of the Right of Recovery

It is evident from the wording of the first paragraph of Article 400 of the Algerian Civil Code that the legislator stipulates the following conditions for exercising the right of recovery:

1. The right must be disputed:

This means that the right is subject to dispute, as clarified in the matter of cases of selling disputed rights. This occurs when a lawsuit is filed before the judiciary or when there is a genuine dispute over the right, even if no lawsuit has been filed before the judiciary.

2. The assignor (debtor) must declare to the buyer his intention to reclaim the right and return the price and its accessories:

The assignor must declare his intention to reclaim the right to the buyer and return the actual price paid in the transaction along with the expenses and interest on the price from the time of payment. The law does not specify a particular form for this declaration. It may be made through an original request filed in the usual manner for filing lawsuits and directed to the buyer rather than the creditor. If there is a dispute and the buyer is a party to it, the declaration can be directed to the buyer through an incidental request. The declaration can be made with a document from the minutes of the proceedings, and it takes effect from the time it reaches the knowledge of the buyer according to the general rules. The declaration must be followed by a genuine presentation of the actual price, expenses, and interest at the time of payment, and the presentation must be followed by deposit according to the established general rules. The request for recovery only takes effect from the time of response or genuine presentation.

In other words, the discharge of the assignor's claim only takes effect when he returns to the assignee the actual price paid along with the expenses and interest from the day of payment.

It is permissible to exercise the right of recovery at any time until the dispute regarding the right is settled, and it can be directed to whoever has obtained the right, whether as the initial buyer or a subsequent one.

Branch Three Exceptional Cases Where Redemption is Not Permissible

The legislator decided to allow for redemption to eliminate speculation and exploitation of disputes. Therefore, in Article 401 of the Algerian Civil Code, four exceptional cases are listed where redemption is not permissible due to the absence of speculative intent in any of them, and therefore the provisions of Article 400 of the aforementioned Algerian Civil Code do not apply to them.

Accordingly, Article 401 of the Algerian Civil Code states: "The provisions of Article 400 do not apply to the following funds:

- If the disputed right is part of a group of funds sold as a whole for a single price.
- If the disputed right is a shared right among heirs or partners, and one of them sells their share to the other.
- If the disputed right is a debt owed on real estate.
- If the disputed right is sold to the holder of the property."

1. Refer to: Fathi Abdel Rahim Abdullah, "Al-Wajiz fi Al-Uqud Al-Madaniyah Al-Musamah", the previous reference, p. 290.
 - a. If the disputed right is part of a group of funds sold as a whole for a single price. For example, if an estate is sold as a group of funds including its rights and debts without considering any specific element, in this case, the disputed right loses its individuality, and the concept of speculation specifically disappears. Therefore, redemption is not permissible.
 - b. If the disputed right is a shared right among heirs or partners, and one of them sells their share to the other. The concept of speculation is also absent here, and redemption is not permissi-

ble. Buying a partner's share in the disputed right through common ownership aims at division or a step towards it, not speculation. Moreover, redemption does not resolve the dispute; it only results in the redemption of the seller's share, while the remaining partners continue their dispute.

- c. If the disputed right is a debt owed on real estate, and the debtor settles this right for their creditor as payment for the debt they owe them. This settlement constitutes a payment for a debt owed to the creditor, not speculation. Therefore, the creditor (the one to whom the right is transferred) does not intend to speculate but rather seeks to recover their right from their debtor. Hence, redemption is not permissible.

C - If the disputed right is a debt secured by real estate and the right is sold to the holder of the property, then suppose we have real estate burdened by a mortgage guaranteeing a debt to its owner, which is disputed. If the debtor sells it to a third party, the mortgagee has the right to trace the purchased property - which entitles them to cleanse the property - so they proceed to purchase the disputed right to prevent the mortgagee from tracing the property in the hands of its holder. The property is then transferred to the buyer (the holder) cleansed, without the need for complex and inconvenient cleansing procedures. The debtor (seller of the property) cannot reclaim the disputed right in this case because the buyer's intention in purchasing the disputed right was to avoid the cleansing procedures, not to engage in speculation.

So, these are the cases where redemption is not permitted, as outlined in the preceding section, followed by the consequences of redemption as a fourth branch.

Branch Four Consequences of Redemption

Redemption entails the replacement of the redeemer in place of the buyer (the assignee) in the transaction made by the assignor. The replacement takes effect retroactively from the

date of the transaction. Therefore, the redeemer is considered to directly receive the disputed right from the seller (the assignor), and the buyer (the assignee) is considered never to have owned this right at any time.

These consequences manifest in the following relationships:

Firstly: In the relationship between the buyer and the assignor:

If the assignor has lost the disputed right due to the sale, then the assignee also loses it due to the restitution, without considering it as a new purchase by the assignee. Therefore, the restitution has a retroactive effect back to the date of the assignment. Consequently, the actions related to the disputed right, carried out by the assignor during the period between the assignment and the restitution, are nullified. This includes any liens placed by the buyer-creditor on the disputed right, especially if the disputed right is a personal right. Similarly, any mortgages arranged by the buyer on the disputed property do not hold if the disputed right pertains to real estate.

Secondly: In the relationship between the buyer and the seller:

Restitution does not affect the relationship between the buyer and the seller. The sales contract remains valid between them. Therefore, if the purchase price has not been paid at the time of restitution, the assignor remains indebted to the assignee (and the assignor cannot reclaim any guarantee from the seller). Consequently, the seller retains the right to demand payment of the purchase price and other obligations arising from the sales contract from the buyer. The assignee does not replace the buyer in these obligations, as the seller did not deal with the assignee directly. Therefore, the seller is not obliged to transact with the assignee, and the buyer cannot claim any guarantee from the seller after the assignee has obtained the transaction from the buyer, unless the buyer was unaware that they were purchasing a disputed right. In that case, the seller is liable for guarantee and compensation. This was affirmed by the Supreme Court in its decision stating that "the seller is bound by the guarantee if the sold item does not possess the qualities which were

guaranteed at the time of delivery to the buyer, or if there is a defect in the sold item that diminishes its value or its utility according to the purpose for which it was intended, as stated in the sales contract, or as is apparent from the nature or use of the item, even if the seller was not aware of the existence of these defects."

Thirdly: In the relationship between the assignor and the seller:

The assignee here owes the disputed right to the seller since they are not a stranger to the right, unlike a guarantor, if they are foreign to the party granting the right. Consequently, the disputed right does not transfer from the seller to the assignee. The dispute between them has been settled, and the seller no longer has any right to claim anything from the assignee regarding the disputed right. The restitution has the effect of settling the dispute. If the disputed right is a debt claimed by the seller against the assignee, then the restitution does not transfer the debt to the assignee. Instead, the debt is annulled due to the unity of obligations. Similarly, if the disputed right is real estate, the dispute over it is resolved, and its ownership is transferred to the assignee without any contention from the seller. The property is not considered to have passed from the seller to the assignee but is considered to have been owed by the assignee from the seller. Therefore, it does not require registration.

If the buyer has purchased on credit, and the assignee has become liable for this price until its due date, then the assignee is not liable to the seller for anything but is liable to the buyer.

It should be noted that the Algerian legislator did not specify the procedure for the return of the disputed right in clearer and more precise terms.

The first branch:

The Wisdom behind the Prohibition:

This prohibition, as mentioned earlier in Article 402 of the Algerian Civil Code, aims to remove any suspicion from judges and their assistants. The purchase of a disputed right by any of these individuals may imply the exploitation of authority to resolve the dispute in their favor, or at least lead people to believe so. Preserving the dignity of the judiciary and trust

in it requires keeping them away from any suspicion.

This wisdom necessitates limiting the prohibition to the purchase of disputed rights. If judges or their assistants are sellers of such rights, the prohibition does not apply. Purchasing raises suspicion, while selling severs ties with the disputed right and removes any suspicion.

If this is the wisdom behind the prohibition on judges, what is the scope of this prohibition concerning individuals? This is what we will address in the following branch.

The second branch:

The Scope of the Prohibition concerning Individuals:

Article 402 of the Algerian Civil Code mentioned above clarifies that the individuals prohibited from purchasing disputed rights are as follows: judges, judicial defenders, lawyers, notaries, and clerks.

Before explaining the intended meaning of each category, it should be noted that this enumeration in Article 402 of the Algerian Civil Code is exhaustive, not illustrative, due to the exceptional nature of this provision. Therefore, adherence to the mentioned categories without applying this provision to other categories not mentioned, such as court translators or experts, is required.

Firstly - Judges:

These are individuals appointed to adjudicate lawsuits brought by people under the authority of a competent body. It is essential, for Article 402 to apply to them, that they hold a judicial position at the time of purchasing disputed rights. If a judge does not hold this position at the time of purchasing disputed rights, Article 402 should not be applicable to them. For example, if a judge purchases the disputed right before acquiring the status of a judge or after retiring from judicial work.

A judge is not prohibited from purchasing the disputed right under his own name only but is also prohibited from purchasing it even under another person's name, fictitiously, on his behalf.

Secondly - Judicial Defenders:

They were formerly known as legal representatives. Their work is limited to specific types of cases, namely legal disputes, and within specific geographical boundaries.

Firstly, regarding the prohibition on legal representatives from working outside the judicial council or court where they are registered:

The legislator has included them among the categories mentioned in Article 402 of the Algerian Civil Code, which prohibits these categories from purchasing disputed rights.

Thirdly, concerning lawyers:

A lawyer's work is not limited to a specific region within Algeria but can extend to representing clients before any courts where they are permitted to practice. Therefore, they are prohibited from purchasing disputed rights in cases where they act as legal representatives for any of the disputing parties.

Fourthly, regarding notaries:

A notary is a public officer appointed by the public authority, responsible for drafting contracts that require official certification by law. The prohibition related to purchasing disputed rights applies to them according to Article 402, provided that the dispute falls within their jurisdiction and they possess this status at the time of purchasing the disputed right.

Fifthly, court clerks:

They are court employees working in various chambers and sections at all levels of the judiciary, responsible for receiving petitions, maintaining records, preparing sessions, and depositing evidence. They are also included in Article 402, and therefore, they are prohibited from purchasing disputed rights falling within the jurisdiction of the court where they are appointed.

In our opinion, the legislator should have included other categories within Article 402, such as experts, or made the categories listed as examples rather than exhaustive, to provide broader protection for the rights holder.

After understanding the individuals prohibited by the Algerian legislator from purchasing disputed rights, we need to examine the conditions for enforcing this prohibition and the penalties for violating it, which we will address in the following section.

Considering disputes within the jurisdiction of the courts where they operate is a measure to combat speculation and to keep judicial workers away from any semblance of impropriety or abuse of influence.

If a judicial official sells a contested right, the contract is not void because by selling the contested right, the judicial official severs his connection to it, thus eliminating any suspicion or doubt. Therefore, the legislator did not invalidate this action.

After discussing the conditions for the prohibition, let's now address its consequences.

Secondly - Consequences of Violating the Prohibition:

French jurisprudence holds that the consequence of violating the prohibition on purchase, as discussed in our case, is relative nullity. This is based on the premise that the purpose of the prohibition is to protect the seller, so the right to invoke this nullity lies solely with the seller.

However, Algerian legislation explicitly states absolute nullity as the consequence for violating the provisions of Article 402 of the Civil Code. This is evident from the final clause of Article 402, which states "...otherwise it shall be void." Consequently, the contract does not generate any effects, neither for the contracting parties nor for third parties. Absolute nullity is based on public policy considerations, as exploiting a judicial officer's influence to purchase contested rights violates public order. Even if the intention of the judicial officer in exploiting his influence is not evident, his purchase of contested right still raises doubts about the judge's neutrality in a dispute falling within his jurisdiction. These doubts undoubtedly relate to public order.

This covers the individuals prohibited from purchasing. However, we still need to discuss the prohibition on lawyers from dealing with their clients' contested rights, which is addressed in the second point.

Point Two: Prohibition on Lawyers from Dealing with Their Clients' Contested Rights

The legislator has included the application of the provisions of Article 402 of the Civil Code in Article 403, based on the scenario mentioned in Article 403, which is more likely to occur in practice. It states: "Lawyers and judicial defenders are not allowed to deal with their clients' contested rights, whether the dealings are under their own names or under assumed names, if they are the ones who have undertaken the defense of these rights, otherwise the transaction is void."

It is clear from the above-mentioned text that all forms of dealing that may affect the contested rights are prohibited for lawyers, including purchasing these rights. Therefore, a lawyer who undertakes the defense of a contested right is not allowed to buy, exchange, donate, or participate in it, nor can his fees be a specified share of what is awarded to his client.

Regarding the nature of the lawyer's relationship with his client and the consequences of violating the provisions of Article 403 of the Civil Code, we will address these questions in the first section.

Section One:

The Lawyer's Relationship with His Client

The lawyer is considered the primary assistant to the litigants. Advocacy is a free profession practiced by lawyers across the national territory before judicial authorities, regulated by Law No. 13-07 dated October 29, 2013, which includes the profession of advocacy.

The lawyer provides legal advice and consultations, as well as represents his client's interests before the courts, based on a contract of engagement between the parties aimed at providing care rather than achieving a specific outcome.

In civil matters, the lawyer is considered a representative of the plaintiff, while in criminal matters, they are considered a defender of the accused to ensure their rights. The lawyer has several tasks or functions on behalf of their client, including:

- Intervening in pre-session procedures such as investigative procedures.

- Taking necessary actions required to proceed with lawsuits.
- Expediting the implementation of judicial decisions.
- Providing legal opinions and consultations.
- Defending the interests of any plaintiff before any judicial authority.
- Maintaining professional confidentiality.

These duties are outlined in Articles 8 to 26 of Law 13-07 regarding the legal profession.

Algerian legislation, specifically Article 403 of the Algerian Civil Code, prohibits lawyers from dealing with their clients in disputed rights that they are defending, whether in their own name or under an alias.

Regarding the relationship between the lawyer and their client, the penalty for violating the provisions of Article 403 of the Algerian Civil Code will be addressed in the following section.

Second Section

Penalty for Violating the Prohibition

Article 403 of the Algerian Civil Code stipulates absolute nullity as a penalty for a lawyer's dealings with their client concerning disputed rights, as detailed above, and this nullity relates to public order.

The wisdom behind prohibiting a lawyer from dealing with their client in disputed rights is to prevent the lawyer from exploiting their position, which is usually more knowledgeable than the rights holder about the strength of their rights. In their personal interest, they may deceive the rights holder into believing their position is weak, thereby persuading them to accept the lawyer's fee as part of their own right. Therefore, to protect both lawyers from themselves and rights holders from the misconduct of some lawyers, and to ensure justice and respect for all involved, lawyers are prohibited from dealing with their clients regarding disputed rights, regardless of the type of transaction. Any contract contrary to this is null and void absolutely.

Naturally, this prohibition ends upon the issuance of a final judgment in the case, as the right no longer remains in dispute after this judgment, and the lawyer may then deal with it on behalf of their client.

Conclusion

Through our research on this topic, we have attempted to highlight the legal and Sharia aspects of one of the most important transactions, namely the sale of disputed rights, in which one party to the dispute sells their contested right in order to avoid the hassle and expenses of litigation and other procedures.

Certainly, here are the translations of the five findings:

1. The study revealed significant disparities in the concepts related to rights sale between Algerian law and Islamic law.
2. It was found that challenges arise when attempting to apply Islamic Sharia principles in a non-Islamic legal system.
3. The study found differences in the conditions and transactions related to rights sale between the two legal systems.
4. The results underscored the need for further research and study to clarify and simplify the rules of rights sale in this context.
5. It is important to consider these findings when drafting legislation and formulating policies related to rights sale in Algerian law and in the Islamic legal system.

The wisdom behind determining the recovery is to discourage speculators from purchasing disputed rights, to limit disputes and cases, and to prevent judges and their assistants from exploiting their positions. Protecting the dignity of judicial workers and maintaining trust in them necessitates keeping them away from suspicion. Thus, the wisdom behind prohibiting the purchase of disputed rights by judicial workers is to keep judges and their assistants away from suspicion. However, if judicial officials or their assistants are sellers of rights, there is no prohibition, as it is the purchase that raises suspicion.

The Algerian legislator has provided a special application for the sale of disputed rights to judicial workers, specifically regarding a lawyer's dealings with their client in disputed rights if they are the ones defending them. It is evident that lawyers are prohibited from all types of transactions, such as buying this right, obtaining it through gift or exchange, and it is not even permissible for their fees to be a specific share of what is ruled for their client.

These aforementioned transactions are considered null and void, whether conducted in the name of the lawyer or under an alias. Therefore, the penalty for the violation is absolute nullity, and the prohibition remains in place as long as the right remains in dispute and the lawyer is defending it. If the dispute over the right ceases, there is no objection to the lawyer dealing with it on behalf of their client.

Therefore, despite the amendments made by Law No. 05-10 dated June 20, 2005, and Law No. 07-05 dated May 13, 2007, these amendments did not affect the issue of selling disputed rights, despite the legal loopholes present.

There appears to be a contradiction between the provisions of the law and the provisions of Sharia, as the latter has deemed the purchase of disputed rights invalid and considered it a transaction of deception, while in positive law, it is permissible.

Therefore, in order to achieve harmony between reality and the law, between the law and Sharia, and to provide greater assurance of individual rights and more opportunities to reduce disputes, which is the only way to achieve social stability, and considering ourselves as students of the law, we propose:

- Redrafting Articles 400, 401, 402, and 403 of the Algerian Civil Code.
- Considering Article 2 of the Algerian Constitution, which states that Islam is the state religion, we recommend ensuring ownership of the sold property at the time of sale to allow its sale, so as not to conflict with the provisions of Islamic law, as it is considered a transaction of deception, and a transaction of deception is void.
- Adding legal articles in Algerian legislation to clarify the procedures for recovery.
- Amending Article 402 of the Algerian Civil Code and broadening the mentioned categories, for example, to make the scope wider to protect the rights holder.

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