

Investigating Movable Property in the Commercial System of Afghanistan

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ABSTRACT

Whatever is useful for human and fulfills their needs is called property. Property has a special importance in human life, if the materials and spiritual needs of people are met by means of property, then it is very important for us to know it, and to know moveable property in terms of the commercial system of Afghanistan is very important, because the moveable property is condition for a commercial transaction, and in this article we have first identified the property, then we have examined the mobility of the property, and then we have examined the effects of the moveable property in the commercial system of Afghanistan.

Keywords- property, moveable property and business.

I. INTRODUCTION

One of the important issue in commercial law is the moveable property, which has not yet been comprehensively investigated, and it convinced me to write this article, so that I can fill this research gap on the one side, and from the other side. I would like to ensure that the dear readers can have reasonable and scientific justification of the commercial law of Afghanistan, in this sense we first identify the property, then the property mobility and then we have comprehensively examined the effect of the property mobility in the Afghan commercial system.

II. METHOD & MATERIALS

In researching the form and content of this article, we have used the library method, we have made use of numerous libraries and authentic books that we

have property in the word meaning is desire and the sum of that property is either any object that a person owns or it is the same thing or it is a benefits, such as:

Gold, silver, animals, plants or the benefits of an object, such as living in a house, (Amid, 1390 AH).

But property does not refer to anything that has not been required by humans, like birds in the air, fish in the water, plants in the plans and mountains or mines in the ground. In the past they used money for planting, land and food, then slaves and then money for everything obtained from books, but instead money was given anything that has economic value and can be acquired is referred to as property, as a result, houses, lands, movable objects, rights of easement usufruct, copyright and similar objects are included in property. (Abdullah, 1391 AH, Property rights).

In article 126 of Al-Ahkam Al-Adliyah Magazine it is defined as bellow: (property is everything that human nature has a desire for and its saving is

possible at the time of need, whether it is movable or immovable). (Al-Ahkam Al-Adlieh Magazine,1381 AH).

The above definition is critical, because it is incomplete and not comprehensive. For example, fruits and vegetables are considered property and can't be saved, because they are quickly spoiling or drugs and poisons are considered to be property, but human maturely hates them. Also, permissible objects such as hunting are not considered property before acquiring it, despite the fact that human nature has a desire for it. (Abdullah ,1391 AH, Financial Law).

And in article 472 of the civil code of Afghanistan property is defined as an object or right that has a material value in the mind of the people. (Civil Code of Afghanistan, 1355 AH). According to this definition property includes property, which means material property that exists outside and can be touched such as, a house garden, land, car and other objects and rights such as patent rights, authorship of inventions and similar objects.

But the main flaw in the definition is that according to this definition mere property includes objects and rights and does not include benefits. We present another definition for this purpose. Property is something that has basic conditions.

- 1) It is useful and fulfills a need, whether it is a material or spiritual need.
- 2) It can be assigned to a specific person or entity. (Langurodi, 1380 AH).

This definition is criticized, because it has a flaw, whatever is not useful, it's not property, like a grain of wheat and a drop of water, because it cannot be useful on its own, while in fact a grain of wheat and a drop of water are part of the property. For this purpose, a comprehensive definition of we pay. Any object or right that has benefits and can be owned and fulfills material and spiritual needs is called property or anything that useful human and satisfies his need is called property. (Naseh 1387 AH)

But the question is whether money is used in this broad sense in Afghanistan's commercial system?

Our answer will be negative, because in the commercial transactions in this way even if the purchase and sale of property is done for the purpose of gaining profit it is still not called business, because it is a condition of commercial transactions must be done against movable property and based on this movable property I what separates commercial activities from non-commercial activities. (Niazi ,1396 AH).

As in the article (14 and 15) of the Afghanistan trade law the movability of commercial property is stipulated; merchants and non-merchants who buy movable property for the purpose of selling or renting it to another person and covert the movable property to its original state or covert it to another form and sell or lease it, this sale and lease are considered as commercial

transactions or businessmen and non-businessmen who rent movable property with the intention of renting it to someone, renting and leasing such movable property are considered commercial transactions. (Afghanistan Trade Law,1336 AH).

We have come to the conclusion from the provisions of the Afghanistan commercial law that in the commercial system of Afghanistan, movable property is a condition.

"moveable" is quoted from the root, literally, it means to transfer. (Dekhoda,1377 AH). The civil code of Afghanistan has defined movable and immovable property in the following order in article 478. Real estate is an object that has a fixed principle and it is impossible to transport it without being destroyed. Objects that do not have this description are known as movable objects. (Civil Code of Afghanistan 1355 AH).

So, in order to separate movable property from immovable property, it is necessary to fulfill two conditions about it.

- 1) It is possible to transfer it to another place.
- 2) Transferring it should not cause damage to the property itself or its location.

If the property has these two conditions, it is movable, but if the said property is installed in objects or land or is used in such a way that its transfer causes damage to the property or place, then it becomes immovable, like the repair stones used in construction. According to article 479 of the civil code, movable objects that the owner allocates for the use of real estate are considered real estate.

Immovable properties can be studied in four categories.

- 1- Property that is inherently immovable and cannot be transferred from one place to another place.
- 2- Properties that are movable by nature and are changed into immovable by human action in such a way that they can be used in land and buildings and whenever they want to separate the property from the land or building, it will be damage or incomplete or there will be defects and damage in its place. Therefore, a nail hammered into a wall is immovable, if its removal causes damage to its place.

These types of property are immovable as long as they are connected to the ground or building and after they are separated from the building or ground, even though they are separated as a result defects and damage are found in it or in its place its movable and like the fruit and the result, which is immovable before picking or harvesting or absolutely its roots and branches and the stem and cutting are immovable until they are cut or uprooted.

- 3- Properties that are movable in the ruling due to the development of agriculture and its important effects in the production of means of living, in the early 19th century jurists came to the idea, that property is used in agriculture and its movable, such as: cows, eggs, fertilizer seeds in terms of the close relationship that

exists between them and agriculture property. In terms of the jurisdiction of the courts and their arrest, it should be recognized as a non-movable property. This opinion was approved by the jurists and it was applied as an exception to the rule and its ruling is in movable property, that used in the industrial affairs of factories and in non-transferable. The civil code of Afghanistan under the articles 479 and 480 recognizes movable objects that the owner allocates for the use of real estate and any concrete right related to real estate and any claim related to it as a real estate.

4- Subordinate property is immovable. All concrete rights for immovable property including the right to usufruct from immovable property the right of easement in relation to non-movable property and like are subject to the jurisdiction of immovable subordinate courts. (Jubal, 1388 AH).

III. CONCLUSION

By distinguishing movable property and immovable property, it can be written as a result any property that is movable is the subject of the commercial system of Afghanistan and property which is not movable that is not the subject of the commercial law of Afghanistan and the transaction that is carried out on movable property is not considered a commercial transaction. For example:

Nails, clay and plaster are movable before the human action. Fruits and agricultural products which are transferred after the act human picking and the transaction that is done on them is considered a commercial transaction.

Those provisions that explicitly state the powers of the President against the legislative branch.

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