Investigating the death of one of parties to the contract and its effect on dissolution of the contract

Siamak Irani¹* and Reza Ranjbar²

1-Department of Law, Ilkhchi Branch, Islamic Azad University, Ilkhchi, Iran
2- Department of Law, Tabriz Branch, Islamic Azad University, Tabriz, Iran

*corresponding: Siamak Irani

Abstract

As to effect of death on dissolution of the contract it must be said that “the principle of effect less of the death on dissolution of the contracts” which is deducted from many analytic rudiments. Is based on doctrine of binding and the general rule is that obligations are never the less, in other hand, with a view to principle of “almost every general rule has its exceptions”. There are some exceptions there to ad consensual agreements, personal obligations. Obligations limited to lifetime, finance agreements, contract of marriage, guardianship contract. According to the general principle, in spite of death of one or both parties to the contract, the agreement remains in effect, and the heirs are deemed legal representative in performing remained obligations. But contractual obligations never transfer to the heirs and representative's obligations are limited to patrimony. As to situation of the obligations and contractual effects, supposing that death effects the dissolution, the parties are cleared form future obligation with annulment of the contract, but the last executed obligations are remained on their shoulder so each party is obliged to pay in exchange of what has been done before annulment.

Keywords: death, dissolution, contract, obligation, principle of binding, consensual agreements.
Introduction

- Background

There is some exceptions to; 

1- Subject explanation being alive and having legal capacity are essential conditions to come into or enforce the contract. Because the dead person is lack of legal persona city and real intent;

For protection of inspected persons not having legally needed intent, their decisions remain effect less.

Once the contract is made, effects of such contract 90 back to the past and that is why death of one of parties doesn’t inter for with his past obligations.

Let’s make it more clear: the principle of the contract is that it must be binding and of obligations binding contracts remain effective even with the death, upon which Art 23/ of civil code provides that: binding on the two parties concerned. But with view to “almost every general” rule has its exceptions.

There are some exceptions to general principle, for example: revocable agreement because as we know by virtue of Art. All revocable contracts are nulled by death of one of the parties. Additionally in contracts based on personal characters, death of the said person dissolves at even if that the contract is binding one.

For example death of painter obliged to paint. That is the same as to parts his persona city is the main cause of the contract as the Art: 497 provides that: the contract of lease the owner of the profits of the thing hired only for the duration of his own life, the lease is void on the death of the lessor.

Effect dissolution and it remains effective, we should analyze two subjects deeply: the party responsible to perform dead’s obligations and legal situation of dead’s future obligations.

Briefly, as to party responsible; To carry out the obligations, heirs are legal representative there about but this theory is criticized and in of her hand accept ion or rejection of the patrimony on behalf of the heirs effective on heirs duties along with limit of theirs duties are subjects that require move analyzes.

About legal situation of fat are remained obligation the question is in a case obligator dead’s before due time of undertaking, the heirs duties becomes does up to date or post pond to real due time?

There are two answers there to: firstly, with view to Art ide 281 of probate affairs acted on 1940 providing.

That: dead’s future duties become it is possibly deducted that all his future duties become. In other words promise may claim immediately without being wait for due time.

Secondly, relying on some legal jural principles it should be believed that in cases that due date plays significant role in economic balance of the consideration, the heirs are bond to full fill on due date specified.

Lastly, in contracts, death cause them to dissolve, appointing effects of the dissolution is of most significant, meaning that does the dissolution, effect back to contract making date or once the party dead?

From other hand in obligations un-separable with its effects respond to the future, answer to partly done and undone obligations requires analyze. Some vague aspects of the thesis are.

A: What criteria for dissolution of being effective if party dead?
B: Does undertaking, ownership or consent effect duration or dissolution of the contra it?
C: Common and different points of open ions and doctrine of sunni and Shia jurists on reason of dissolution.

2- Principle of non-effect of death on dissolution of contracts: in explanation of meaning of that must be noted that: generally, death of parties to the contract doesn’t effect on dissolution, this principle may deduct form many analyzed rudiments. Most important of them is binding principle of the contract. First we focus on basis of principle of no effect of death, then as to exceptions there to.

2-1- Basis and grounds of principle of non-effect of death on dissolution

Following study on those concepts we will review its basis and grounds as: binding principle, principle of being personality of obligations.

2-1-1- Binding principle
It is one of the most significant principle
The principle in all kinds of contract is being binding which is’ in the studied following, in details.

2-1-1-1- In definition of binding doctrine of obligations it must be said that:
The principle is divided into two section: ”doctrine” and ”being binding” firstly there should study word meaning of the principle in order to find whether it got new meaning or based on its word concept.

In literal meaning the principle means: root, basis, rudiment and rule what depends on itself so whenever the word principle is used whether in constitutional code or in civil code as: ”non- gratuitous” in Art. 285 civil code and ”taslit” i.e. Islamic doctrine granting owners absolute right to deal with their property except in matters in which the law has made exception in Art 30 civil code.

Herein literal meaning is mirror the meaning of principle. “Binding” form literal meaning point of view, means stability durability, also in legal expressions, it is common aspect of all contracts and unilateral obligations in which a party to that obligation may not rescind it unilaterally.

Literal meaning ‘herein’ is the same as its term meaning, that is because that doctrine of binding obligations doesn’t amount “constitutions“ but rather confirmation.
We shall not mix the word undertaking with binding.

Principle of binding obligations means enforceability of contract irrespect of irrevocable or binding agreement even generally, both concepts are related to each other but rhetorically there are some.

Differences: principle of binding obligations keeps the parties binding to obligations and prompt them form rescinding the agreement, but undertaking means to obey it.

As to basis of principle of binding believe it is based on logic and wisdom so that in making the contract the parties rely on each other and on this basis they regulate their economic and social order fundamentally, About their differences we shall say: under taking to the contract is general principle whether in irrevocable a binding one.
And in an irrevocable argent until the contract is rescind, the parties are bored there to and holder of right of rescission May not reject the results that has been found pre-rescission.
For example: As we know proxy is an irrevocable a green and client is bound to pay debts his agent has put on his shoulder therefore it is of most significant the question of basis of binding obligations. be replied in 3 different ways:
1- This power emer- y form the will. Respect of personality and freedom prohibits external power to be imposed. The law respects such internal binding and actually confirms the free will.
2- to be bound over the contract emery form moral principle on which the party signing must bound there to.
Breach of promise has been seriously blamed in holy book and social moral. So the law Quran
tees such moral proclamation. That is why immoral result of each agreement is anulled.
3- Social necessity and policy nowadays, in current law, it must be accepted that, creating will
doesn’t amount to direct source social sources root at moral and tradition.
Our legal system, confirms private meet of minds and accepting that the free will is as useful
social means. The government supervises the contracts, when it finds contrary to Pablo polity,
annals it.
Art.275 civil code provides:
Agreements which are contrary to public morals reasons, as contrary to public order, not
withstanding law is permissible in principle there is no exaggeration if we the contract is
binding if legal form law point of view.

2-1-1-2- Explanation on indication of doctrine of binding contracts on principle of non- effect
dissolution.

As noted in the agreement (no minted on un-nominated) the general principle is their binding
revocability of the gerent requires legislature’s expression.
Proof of binding doctrine doesn’t limit to some contracts and covers all kinds whether,
nominated, un nominated, ownership, conditional and absolute agreements.
Binding doctrine speak out two phrases in itself.
First: the number of binding is mare than revocable agreements
Secondly, doubt as to legality of contracts without any reasonable doubt as to its being
binding or revocable, then it is deemed binding.
On above basis, form binding and revocable point of view, the contract is divided into 2
sections:
The first part. There is no doubt as to binding or revocability of the agreements, here religious
jurisprudence and civil lawrecognize them as binding.
The second part are contracts without doubt as to their binding or revocability, on the basis
of binding doctrine, they are deemed as binding. There fore revocable agreements are
exceptional and limited to subjects mentioned at rules, form other hand a great distinction
between them, according to Art 954, is the term inaction of revocable agreement by death of
each party.
The general rule is that obligations are free form the party’s character.

2-1-2- They are divided in two parts:

Obligations depend on persona city of part to such contract and obligations independent of the
persona city; by the latter means, obligations possible to perform by any other person than the
party made it. In other words personality character of the party concluded the agreement is not
the main cause of the obligation on the contrary. Obligation depend on personality character
are such agreements just the party made it, may fulfill it. For example: an expert writer is obliged to write.
In fact, in obligations depend on the person himself, the fulfillment depends to the promisor or promises.
So heirs of the famous artist whose personal character was the main cause, my not be asked for performance of the dead’s obligations.
Term “on one’s own” may impliedly be inferred on been expressly put in the agreement.
As the Art. 497 of civil code confirming the above provides that: according to some jurists, the purpose of “ on one’s own obligation” is a case in which exploitation of object of lease stipulated to the lease holder.

2-1-2-1- concept of the principle
In some situations. It may occur doubts that whether the obligation merely shall be done by the obligator or trans fordable to the heirs?
With a view to French civil code Art. 1122 providing that presumption of law is transferability city of the obligation to the heirs.
As a matter of course it is found that the obligations may be done by the heirs and are independent form the obligator.
As Iranian legislature also confirming the *** opinion Articles 231 and 219, specially the latter provides that:
As studied the principle is based on the view that obligation. Performance may be done by the promise or the third party if the promisor refuses or done by the heirs following the promisor’s death. Therefore death of principal obligator doesn’t affect the contract as it is done form the deceased’s patrimony.
On the opposite side the above view are obligations dependent to the promisor merely and for there is no possibility of perform ins by the others in case he: refuses, then according to previous Art 729 of civil procedural code:
For late fulfillment.
Although in the new enacted civil procedural code nothing mentioned there about, some jurist ablished and the cart mas order payment of damage there are diversity of opinions in case law as to abolish or non-abolish of the Article for using payment of damage mechanism in judiciary advisory opinion dated on 4.4.1381. the majority of Tehran province’s judges believe that the previous Article 729 of procedural civil code has been abolished. So the new code is silent there about. And the only way to bind is relying on Art 515 of new civil procedural code by which by the principle of causation payment of late performance is claimable.
Meanwhile according to constitutional law, principle 167 the judge must try and order any case whether form the rules or Islamic sources and may not refuse issuing verdict because of not having of finding.
But the minority of the judges be live non-abolish of the said. Article so in the case of death of the oblige for in cases his personal character is the main cause, for there is no possibility of performing the obligation, then the contract is nulled.
Finally, rational reasoning relation of non-personality of the obligation with effect of the obligator’s death on contract’s dissolution, it must be noted that: generally for non-personality of the obligations. Following the death of the obligator, the performance is done form the patrimony.

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LITERATURE REVIEW:

2-1-2-2 Exceptions on:
2-1-2-2-1- Consent revocable contracts they are in two shapes:
Revocable agreements with permission
Revocable agreements without permission
Even most revocable agreements are by permission in the below they will be explained.

2-1-2-2-1-1- concept of revocable agreement
The common feature is similarity with the permission. The word permission has many meaning as consent, removal of obstacle but mostly is used with consent (Tavakkoli, 2010).
In although divine law, there isn’t definition there about, but accurate glance will show that it is mostly used as removal of the obstacle and consent. Although there are many similar aspects between the permission and consent agreements but the both are distinct, so that the permission is deemed as unilateral contract and permission agreements are of contractual nature.

Whether, the permission is of unilateral nature or contractual one, Art. 120 of civil code provide that: his permission whenever he please, unless he has bound himself to forego this right. With view that the legislature has used the word permission and has denied using the word contract, so the second group open ion. i.e. Unilateral has been preferred the most important aspect of the permission is its being unified. The will and intent of one who gives consent is so efficient and the counter party’s intent doesn’t play any role.
So neither both parties’ meet of minds needed nor rejection of party receiving the permission. Therefore, the permission stands by, if party receiving the consent relinquish following possessed that (Katoozian, 2007).

In our legal system, the principle binding unilateral contract has been known (Katoozian, 2007) and it is binding if purpose of creating its obligation is waived of the right or dissolution legal act. In cases the purpose isn’t any of them and the party doesn’t will to bind himself then the party creating it, may relinquish thereof (Tavakkoli, 2010) as a general rule, Art.108 of civil code provides that:
Legal nature of the permission is somehow close to consent contracts so that some jurists believe that agreements such as loan, proxy and contract of deposit.
Are not contracts as in creating of the, is need for the accepter (Yazdanian, 1999).

Finally, permission agreements are ones their main effect is consent; there is direct connection between and with the party’s will, so the legal act is nulled if the consent is being relinquished (Ebrahimi, 2014).
In other words, without any doubt the permission depends to the party’s will when it is created. But it is of specific aspect by which it is distinct form ownership and other obligations. In confirming, its direct connection with the will Art-954 of civil code. Provides that: matters where adolescence is a necessary condition.
2-1-2-2-1-2- Basis of death effect on dissolution of

Permission nature of the contract and being the main cause of party’s personality
Insanity like death is amounted as dissolution of revocable agreement which is not mentioned
in Art 954 but most jurists believe that it may be omitted.
In compression of two Articles i.e. 954 and 805, some jurists believe the reason of rescission
in cases of the death and insanity is permission nature of such agreements. And revocability
and irrevocability doesn’t play any role therein.
According to that, the basis for dissolution is permission nature and its relation with party’s
personality; and being revocable or irrevocable known as effect and depend ant of the
contract. Therefore the agreement is revocable when the parties don’t intent to create legal right and
obligations, and the contract is irrevocable if they intent to be legally bound.
For example, contract of gift revocable agreement. May not be annulled by death or insanity
of each party that is why its mere effect isn’t to create the permission.
It must be noted that in contracts of permission nature. The owner is a party giving consent
the other to possess his property. The possession here in. is taken placed by proxy or in favor
of both parties such as contract of reward partnership , or contract of capital investment by
sleeping partner.
Personality of the parties’ creat counters confidence in contracts of consent nature. Each
party’s character is the motivation of the other party. In such cases the property owner may
not be expected to face with unknown heirs or guardians. Therefore the death and insanity
must act as basis and the agent and trustee as a reason of dissolution.

2-2-1-2-1-2- Counter theory

It should be noted one of the law science jurist declares that dissolution of revocable
agreement by death or insanity of one of the parties is wrong. But for mostly used wrong it
must be accepted (Jafari Langroodi, 1993).

1-2-2-1-2- Obligations depend ant on the party’s character.

As noted in such agreements for the other person than the parts made it, may not perform it,
so death of the party in pre- due ***, frustrates the contract: the important point is that death
in such cases it to be dissolved provided that the obligations must be principle obligations.
Following, they are studied in details.

2-1-2-2-2-1- Originality of obligations depend ant to party’s character

They are divided nitro parts:
- principle
- Subordinate clause
in other words principle obligation, one that by which the parties make their main purpose and
subordinate clause an obligation made resulting of the main one.
Ar.183 of civil code indicates the main obligation, also is Art.214.
Subsections 3 and 4 in Art. 362 civil code and Art 479 are examples of subordinate clause.
Finally what is of most significant the subordinate clause depends to main obligation but.
Actually, diversity of the obligations emery form the theory that the result and effect of obligation isn’t limited to creation of the obligation but also to transferring ownership right by which the contract is divided in vesting possessory right and obligation nature.

In addition to obligations with nature of vesting possessory right, there are provisions in an obligation resulted from provisions death of a party to the contract annuls the precision, if the obligation is of personal character, but it doesn’t affect the principal contract as the precision depends there to.

2-1-2-2-2- Basis for dissolution of contracts in obligations depends to parties character.

Death of obligator in such cases are being amounted as impediment to fulfill men of an obligation frustration of contract per for manse has general concepts than impediment to fulfill, as the latter is among its concepts. Because, firstly the frustration may not be by impediment, secondly it may be along with malice of the obligator (Banaei Oskouei, 2013)

Therefore in an example of impediment to fulfillment of an obligation, there is no any malice and the causation is beyond the control that is why most jurists believe the Arts 229, 227 and 240 civil code are based on that theory.

Therefor the obligator never releases form that if he pretends not knowing economic matters and becomes insolvent.

Art.215 provides:
The obligator is bound to pay damage if it may not be fulfilled unless be proves it was beyond his control, also is late fulfillment.
The first part of the Article is an example of the impediment but the remaining part of it, deems to be impossibility of fulfillment.

Impediments to fulfillment of an obligation by death of the obligator in principal undertakings dependent party’s character, may amount as subordinate impediments and they occur when the obligation has legally been made but accident of beyond the control impels it (Shabani, 2010).

With view to this theory’ in contracts for a counter voluble considerations, the agreement is rescind if it impedes to fulfill, and there is no right to rescind as the impediment occurred is general and forever.

In fact requirements of a contract in such cases, is formation of bilateral undertakings. On this basis both parties are tied and unfastening on never release the other.

The above opinion is emerged from the following Arts. 567, 647, 527, 387, 481, 438, 496, 527, 531, 581 and 683 civil codes.

Also in religions jurisprudence ad practiced by the shi’ites, impediment to fulfillment of an obligation terminates the contract; by which permanent impediment on behalf of one or both parties makes it logically to be end.

The theory doesn’t limit to specific agreement. For example, in location Rei (letting of a thing), transfer of benefit own reship in exchange of specific bound there, and the agreement is nulled if each faces with impediment.

Also is the, permission in contract of agency; if one is empowered o buy or sale a thing the agreement is terminated if subject of the proxy wasted.
What is clearly deducted from the jurists’ open ions, the annulment approaches common to preliminary and original; permanent impediment in provision cases, by virtue of Art. 240 of civil code, the promise are entire to rescind it. In other words, the promise may release himself from all obligations. But in provision that divided in valid and invalid agreement the promise is entitled to perform the valid part and rescind the rest by option of obligation a fulfilled in part. Therefore it is generally terminated if impediment becomes permanent.

2-1-2-3-1-1- Obligations limited to life time

In addition to above mentioned items, there are some undertakings the heirs may not be expected to fulfill them. The most important examples are obligation to family members or wife entitled to alimony.

Conclusions:

1. As to study on death effect in contract dissolution, it must be said that: the principle is non-effect of death in dissolution. i.e. the general rule is that patty or parties’ death doesn’t affect the contract.
2. The most important analytic basis of that. Are principle of binding obligations and theory that obligations are in depend ant form party’s character.
3. Permission contract is one of significant exception to the general principle: almost every general rule has its exceptions, so that the party’s character us tied with the consent.
4. Another exception to the general rule is obligations dependent to party’s character. For such obligations may not be performed by other person than the party made it, so it terminates following the death.
5. Other exceptions is an obligation limited to life time. The nature of such an obligation is such that the heirs may not be expected to fulfill it, such as Fiancé, contract of marriage, contract of capital investment by sleeping partner, contract of reward, contract of agency, bail agreement. contract of deposit and loan contract. A3 to state of the obligations and effects of the agreements in cases death affects it, better to say: “Termination of the contract , contrary to annulment, doesn’t put an end to it initio, doesn’t affect what has been previously performed, there for each party must pay in exchange of what received”
References

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