

Pre-emption in the laws of Iran and England

Samiyeh Sardarkelari

Master Student of Private Law, Department of Private Law, College of Laws and Politics, Science and Research Branch, Islamic Azad University, Tehran, Iran
samiye.kelari@yahoo.com

Abstract: If we put the principle on freedom of will, when a right arises, no one can hinder the exercise of that right, and consequently it cannot be denied any human being. By this explanation, what is recognized in Iranian civil law as pre-emption is an exception to the principle of free will, because Shafi pays the time of the transaction without the will of the buyer and acquires the character of a mob. This right in England is not in violation of the principle of free will, contrary to the law of Iran and its items are not limited, but they are preemption as a priority and if this is not the priority, it seems to be unconventional. In this paper, the intention is to compare these two legal systems in the context of preemption.

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1. Introduction

One of the exceptions to Iranian civil law is the right to sue and its acts, pre-emption and its enforcement is one of the exceptions that have a moral foundation. Because this right is used at a time when the partner with the right to sue does not accept the presence of a new partner. It is for this reason that it has to be promoted to the whole of the sold commodity, and it cannot acquire only part of it, since ownership of a part of the whole right to the existential philosophy of getting into conflict is in conflict.

According to Article 808 of the Civil Code of Iran, the right to sue is manifested only in immovable property and does not cover immovable property at all and does not even extend beyond those immovable property rights. The legislator of the Iranian Civil Code has special conditions for the creation and exercise of this right, which only exists with the creation of those conditions and is applicable.

However, the right to take up and pursue of pre-emption in English law of the United Kingdom includes a wider scope that will be dealt with in this article. Pre-emption in the law of the United Kingdom has a completely different meaning to the present meaning that, under international law, the right to sue was called as the right of a state, by which the government was entitled to goods passing through the boundaries of the water and land of its land.

Because it initially allowed its people to prefer the purchase of goods as preferable, and sometimes they were regulated by an agreement between the two countries, which, for example, it was in the 1974 British-American Copyright Treaty that they accepted: Goods can be rejected from the boundaries

of water and land of their land unless goods are unlawful and even exceeded that if some of the goods were illegal. A country whose illegal cargo has entered its territory can take possession of the ship and cargo and pay damages to the owners of the load and the ship's captain if damages occur.

Therefore, the right to sue has a completely different face and has a wide international and international right. In this article, the intention is to compare these two systems (Iran-UK) on the issue of extradition.

Problem statement

The right to censure in Iranian law raises many issues that many of these questions are still outstanding, and the rise in property prices would waive this right for its owner. Hence, the desire to exercise the right to freedom of expression has diminished, and because of the lack of litigation on this right, they are not firmly established, and even our civil code remains silent on many important issues, especially in the context of the exercise of this right. Remains unclear and leaves no room for solving the problem except to seek out the doctrinal views.

Therefore, it is better to show a little flexibility on Iran's rights, and to use the rights of other countries to overcome the vague and dark points of the law.

Main questions:

1. What are the scope of the right to sue in the rights of Iran and England?
2. What is the origin of the creation of rights in the two systems of Iran and England?

Sub question:

1. What is the difference between the conditions for the establishment of pre-emption in Iranian-British law?

2. What is the right of withdrawal in the law of Iran and England?

Research Methodology:

The method used in this research is a library method and search in websites.

Research purposes

The purpose of this research:

Firstly, to examine and compare these two legal systems in the area of the right to Pre-emption.

Secondly, filling in the legal vacuum is due to the review of this legal system.

Definitions and concepts:

The Iranian Civil Code does not define the right of Pre-emption, but only in Article 808, the provision stipulates:

(If a movable asset is shared between two persons and it transfers one of its two partners to a third party, the other partner has the right to give him the price given by the customer and acquire the value of the collateral This is the right to call this owner and its owner Shafi.)

So you can define the right to Pre-emption:

The franchise is owned by a former partner from a buyer at a price that he has paid. (Amir Naser, Katouzian, Lessons from Pre-emption, Wills of the Heiritage). If we want to root out the right to spit precisely, we must say that the word spittle is added to the meaning of the word, and is derived from the root of the word of heaviness, when it is said that something is being matched with something else: that is, the word of heaven is therefore the object I have joined with the object. The words of intercession and Shafi are also of the same root. (Hassan Imami, Civil Rights Volume Third, p. 10)

They say that they have the right to sue, to take the floor, and to get rid of it is an exception, because they cannot be dispossessed without the consent of the owner. However, it can be seen that Iran's civil law in Article 808 has accepted this one-sided ownership as ownership, and since the exception requires a narrow interpretation, Iranian law should be accepted as much as the law of law and beyond.

In the light of what has been said, it is necessary to distinguish between the right to self-restraint and plea for the sake of justifying the existence of this right, the right to pleading and to enforce it. Therefore, in the first place, a right must exist and remain in order to establish the basis for its application. In legal terms, the right to sue is a discretionary power which the lawmaker has granted to a partner in accordance with the provisions of Article 808 of the Iranian Constitution and it's kind of a fairy tale.

The British law defines the right to Pre-emption:

Pre-emption is a right through which property can be owned, before the right to own the property is

given to someone else, whether natural or legal. This right is also referred to as the first option for purchase, and in other cases the right to prioritize. (Garner, beyana, Editor-in-chief. Blakslaw Dictionary)

Otherwise, the right to swindle is an option and takes precedence over the land and can prevent the owner and buyer, and hence it helps the company. But in the new law, this right arises and the seller sells the property to the holder The right to sue (Shafi) suggests that if the proposal is rejected, the right to sue will be canceled.

The elements of the right to Pre-emption:

Pre-emption is a financial right:

The right to purchase the sold share is called the "civil law" ("the right"), and this is the means of ownership of and possession of property and, accordingly, should be considered financially. Therefore, the rightful owner can overcome it or in Equal to buy a peace deal.

In this way, the power of attorney has all the characteristics of the right to financially.

The skepticism here is that, as a rule, financial entitlement is capable of transferring money while the right to spur is a special partner, and he cannot give it to anyone for free or in exchange for a fee, but this is prohibited by civil law explicitly but it is not used to referring to the history, history and nature of the right, the right to sue to prevent the loss of the partner and eliminate the matter of conflict in the administration and exploitation of the property. (Amir Nasser Katouzian, Lessons from the Exile, the will of the heiritage). It must be accepted that the voluntary transferability of the right to marry is due to the exceptional nature of this right and should not be questioned in its jurisdiction. From the definition of pre-emption in English law, it can be concluded that this right is a financial right because it is transferable and, as it is said later, this right is forbidden, and even the rights of England are a step beyond the rights of Iran in the field of the right to pre-emption and it is that the boundaries of exceptions have broken the rights of Iran, and this right has also come into force in contravention of Iran's law.

Pre-emption is an objective right:

Pre-emption in Iranian law is an objective right because it grants direct ownership and, on the other hand, other conditions have an objective right, including:

1. Pre-emption contains the right to pursue: because it invalidates the use of all the opposite transactions, as stated in Article 816 of the Civil Code: ("taking into account any transaction that the client has before and after the contract (And the meaning of this is the loss of their right to ownership due to the exercise of the right, and the ownership of

all transferees is void from the beginning and returns to the buyer.

2. Pre-emption has the priority:

Because creditors who transfer or receive a bankrupt bankruptcy cannot prevent them from obtaining credit. Therefore, the partner has the right to blame on the rights of the groom. In English law, the right to sue contains the right to priority, and this right is used as a priority in the UK because of the wide scope of this right. In this article we will explain that this priority can be cited.

Pre-emption is transferable:

In Iran's law, according to Article 823 of the Constitution, the right to spoil is inherited. This article stipulates: ((The right to sue after his death is passed on to his heir or heir)

The transfer to the heirs is such that each one of them must be sold in relation to the whole of the property and they are not entitled to take part in any part of it.

As stated in Article 815, the above applies to the above-mentioned Article 815: The right to swear not only be enforced against one part of the judgment, but the owner of the right shall either waive it or the proportion Perform all the best.

It is worth mentioning that the heir to be considered at the moment of the death of the heir. For example, a woman is not inherited from her property, but the right to spoil her legacy because this right is the right to own property, not the possession of the same property.

If the deceased has no heirs, the government can use the right to sue.

Therefore, in Iranian law, the right to sue does not have the capacity to transfer voluntarily, and if the partner (Shafi) transfers his right to all the privileges to another, it is more powerful than the transfer. Because the harm that is caused to avoid it is the imposition of an unwanted partner and the request for division, and because the new buyer has purchased the shareholder who has the right to sue. Therefore, it does not face the unwanted situation and initially accepted this situation and since it is exceptional, it cannot be transmitted intentionally (Seyyed Mohammad Bahr al-ulum, Blagah al-Faqih, V. 1, p. 30)

In England, contrary to Iran's law, the right to sue has administrative capacity and is a documentary of a lawsuit filed in 1788. Henry marian (February25, 2000) the Philips Gorham purchase. retrived 31) December 2012

That is, in the past, when in the past, when part of the United States was a British colony, in the United States (the British colony), when someone bought the right to land for a land, that person would

not buy the land, but just the priority of buying that right. They said they were buying.

This is a fight between Phelps & Gorham V Massachusetts

The purchase was in 1788 and Phelps and Gorham bought six million hectares of land today in the western state of New York, and they bought the land for a million dollars from Massachusetts (which at that time was the British colony) and it was conditioned that Thamen be paid for three years in three installments. They paid a part of the summers in the first year, and after Phelps and Gorham they bought the right to buy the Iroquois Indians and in the same year they founded a union in their own name, but they failed to pay two remaining installments from Thamen, and the Syndicate could not compensate that amount, but since they had previously bought the rights of the Indians from the Indians, they gave that right to a person Named Robert Morris (one of the US senators and founder of a part of the United States), and all the Indians were killed in this act, and this was the western part of the state of New York. As it was said in this case, the right to sue is transferable voluntarily and The British law does not restrict this right to any transfer.

Pre-emption is forbidden:

Eliminating this right is accepted first, because one of the features of the right, unlike the ruling, is the ability to abandon it, and Article 822 of the Iranian Covenant declares in its affirmation: "The right to sue is forbidden and it relates to anything that implies the abandonment of the right.) "

The conditions for the creation of the right of pre-emption.

1- In Iranian Law

Property must be immovable:

In Iran's law, and in accordance with Article 808 of the Criminal Code, which states that the immovable property is not the right to establish the right, it should be noted that the right to swear in Iran's rights is allocated only to immovable property and does not include movable property, and some Para lawyers Exceeding the law of the law and the right to sue only as inherent in the immovable, and even the non-fulfillment of the decree referred to in Article 17. They also do not include Iran, and there is no such thing as the first one in non-movables or inalienable rights and litigation.

According to Article 809 (if the building and the tree is sold without land, it will not be a right of pre-emption) This article does not allow the sale of immovable property through human action without the inherent immovable property of the land. Therefore, whenever a building and a tree are sold without land, there will be no boom.

Since English law as a right of priority is a pre-emption or preemption, this right is not exclusive to immovable property and is also levied on movable property because one of the instruments of the right to take up rights in English law is the provisions of the constitution of the company as well as an agreement on the shares of the company.

The property must be dividable:

In Iranian law, the right to sue is divisible only on immovable property and is intended to be divisible by divorce, which is divided into our current salary through the registration office, and if the property is non-transferable, it is beyond imagination.

The right to sell shares of shares, shares and non-divisible shops, and the small Asiatic and Nehru are not far-reaching.

The property must be co-operative:

In the right to sue, the property must be shared, but it does not matter how much the share of each of the parties is, but this is an exception, and this exception is stated in Article 810 of the Iranian Constitution, as follows: (If the property of the two persons is common in the Mahram or the duct, and one of them owns the property with the right to swing or ditch, the other has the right to swear, although it does not share the property of the owner, but if the property is sold without a memorandum or duct.) Therefore, if one of the partners sells their property without a memorandum or channel, the other partner has no right to swear, and there is no condition for the creation of the right to swear, and the condition of creating the right to swear during a partnership in the swamp or duct is to sell it with the property.

Partners should be two people:

Collateral must be shared between the two parties, and the criterion of two partnerships is prior to sale: If there are more than two partners before the sale, then there is no preemption. So if there is a joint venture between three people, there is no such thing as a supporter, though the seller is one person, each is a partner of two or a seller of two, and one person's partner.

Selling to a third party:

The right to sell in the sale is the same and, if it is an exception, it does not extend to other contracts, and the sale must be made to a non-partner, because it will be meaningful to sell the share to the partner. Therefore, prayer is only a sweet and delicate one. The famous promise of the jurists is that if a partner does not give rise to his contribution to the cause of other things like exchanges, peace, heba or those who make it sound in marriage.

In Iranian law, the conditions for the creation of the right to spit are very limited, and if one of the conditions is not fulfilled, the right to spit does not arise to have the ability to get to the throne, and only

includes the immovable property, whether it is non-movable, divisible and, of course, material, because it does not include immovable property rights and claims as described above.

The issue of the creation of the right to custody in the English law of the United Kingdom is very different from what was said about Iran because in English law the conditions for the establishment of the right to custody do not fall within the scope of the Iranian law, but in order to establish the conditions for the custody of British law, And the advice of jurists was helped. It should also be seen when the right to swindle is used and what conditions are foreseen for the creation and implementation of the right.

2. In English law

According to the lawyers, the preemption in English law has three origins:

- 1- The right to sue according to the law.
2. The right to sue by the founding body of the company.
3. The right to sue under the agreement of the company shares.

1- Pre-emption in the law:

The right to preemptive is in Articles 561 to 567 of the UK Companies Act of 2006, and the law is adopted for the security of equity, in which payments are different depending on the company's profits. In this way, if a company is bankrupt, it lacks the right to (preference) the payment of capital. Which is applied in the following ways:

1. Working Employee Scheme
2. The shares are fully or partially exported
3. Stock rewards

Priority in these stocks, even if the law applies in the other cases, can be changed or canceled by virtue of the company's articles of association.

2- The pre-emption established by the Articles of Association

In practice, the most common use of pre-emption is that the current shareholders can buy the new shares exported by the company before issuing it to everyone.

In this sense, pre-emption means the right to subscribe to membership, in other words, in this case, the present shareholders can hold their relative ownership in that company through the right to purchase shares in order to prevent the stock price from being avoided. In some jurisdictions, the right to subscribe to shares of companies is automatically given to shareholders by written law. For example, this happens in the UK, but it is used in other jurisdictional systems where the company's articles of association apply Bring the right.

3- The pre-emption under the company's stock

Pre-emption company registered in England, Wales and Scotland;

Companies Act in 2006, a source in the company of English pre-emption under section (1) of article 561 of the Companies Act has come a Company shall issue shares in any individual unless:

1. That company will offer stockholders the offer to buy shares at optimal prices.
2. The term for the stockholders to buy shares expires.
3. In this case, the partner can issue shares.

According to Part 5 of Article 562 of the Companies Law, in 2006, the time allowed to the present shareholders (in order to accept the offer at a favorable price) should not be less than fourteen days.

The effect of this convention is that the company cannot issue a large amount of stock to new shareholders before it sells its current shareholders at a desirable price.

In addition to the three sources mentioned above, another condition is to create new rights to establish a priority that is close to Iranian law:

Those in the construction of new homes (new) have invested, usually pre-emption in respect of these houses will be given to them.

Investors are more likely to have the right to buy new homes than before, so investors and individuals close to them have the right to invest in the area where they have developed it, and by investing in construction of the house before the other people and buy houses. This right of purchase is also mentioned in English law as the right to purchase.

Waiving pre-emption

1. In Iran's Law

Waiving pre-emption occurs in two major ways, or is compulsory or voluntary waiver for the separation of the two will be explained.

Scrapping compulsory pre-emption:

1. The delay in the implementation of the right

According to Article 821 of civil rights obtain immediate preemption and, as mentioned, this urgency is customary. So if Shafi in exercise of the right delay, and the delay is not friendly practices and of no force majeure is prevented from exercising his right not to be shot down.

2. inability to pay the price

Inability to pay the price to a delay in implementation is the right and could not intercede for non-payment of the price to the buyer's property, because if the owner does not have the permission of the owner, there will be no choice but to the rightful owner of the property, but consider the hypothesis that Shafi will be ignorant of the amount of time. Here, contrary to the inability to pay the deadline for the exercise of the right is not eliminated.

3. Installation died before getting to preemption:

If the share of a partner is lost before being taken into account, it will surely lose its right and lose its

acceptance, either if it is submitted to the buyer or will be wasted at the hands of the seller.

It should be noted that the loss of some is a defect and does not invalidate the right, but it does not grant the right to cancel because Shafi is free. Exercise the right to take or admit it to the current situation, but losing the possibility of profit is in vain and eliminates the right to do so.

Voluntary waiving pre-emption:

According to article 822 of the Civil Code of Iran, the right to sue is abolished and the abandonment of anything that implies the abandonment of that right, which may be in vain, like Shafi says, I do not get stuck or maybe implicitly and verbally, if Shafi transfers his share to another after communicating with the other, this kind of abandonment is called implied abandonment. Some jurists will ask him if he proposes to buy his share to another partner and he refuses to buy or, without making a bid to another partner, he will be happy to sell it to a third party. The right to take the other party will not be granted. It will void it, and if Shafi congratulates the customer after the purchase.

But should you see whether the right to be canceled before the occurrence? This question has cast doubt on some of the jurists, and some lawyers have even considered that they are not yet forgivable. But what should be accepted as a rule is that, before the occurrence of the betrayal, the partner can abolish his right and his legal action is valid.

2. In English law

You should see how the company eliminates the right to priority:

In British law, corporate executives, especially companies with a number of shareholder brands, often prefer not to comply with the priority.

Because the right to this right can be time consuming, costly and cumbersome. And so the priority may be canceled.

The right may be temporarily revoked by modifying the articles of association of private companies or terminate explicitly in its articles of association or declare that pre-emption away from the shares of the companies is canceled.

In England, the right to give priority to the land was given to those who built construction work on the land, although they were immigrants, because this right was also granted to immigrants. However, with the coming into force of the land and house ownership law in 2002, public ownership was extended, and therefore the builders (builders of construction companies and not real individuals had no particular incentive to choose land that is public ownership, because They knew that they would not be added after making the owner of the profits, and, on the other hand, the public ownership of the right to own the

realm was taken from them. And so one of the priorities in construction has changed over time.

Conclusion:

What is being extracted from the discussion is that the right to custody in Iranian-British law has a near-closure meaning. However, this right in the English law of the United Kingdom includes a broader circle and the concept of priority takes precedence and this priority can be created in any financial, whether movable or immovable. It was even said that this right without land is capable of transferring and closing the mind in Iran's law by neglecting pre-emption, because it is a kind of objective right, and on the other hand, this priority has nothing to do with immovable property. Like the priority in the shares of companies that do not have any similarity to the right to sue in Iran's civil law.

As well as the right to prioritize construction of development areas in English law, brings this right closer to the traditional right of derogation in the law of Iran, because of the material of Article 142, Iran was the owner of any land that had been built up in the past. According to Article 140 of Iran's Covenant, the restoration of land and land belonging to the property is considered to be the property of the property, and nowadays a priority is given to a person who floats it, which is a priority that is very close to preemption in English law.

Suggestion:

The exception civil law in the context of pre-emption, which is a partial foreclosure. If prosperous people can enjoy legal rights by exercising their rights, including the rights of the United Kingdom, they can easily see the irreconcilable and integrity of the courts.

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