

Subrogation of Inheritance: Concept and Principles A Comparative Study of French and Iranian Law

*Mahmoud Kazemi**

*Jamshid Askar Ramaki***

Received Date: 23/06/2019 - Accepted Date: 20/07/2019

DOI: 10.22096/law.2019.109910.1477

Abstract

In western Law, especially in French, subrogation has been Established for justifying the survival of debt and contract after the death of one of the parties.

In other word, when one of the parties to a contract dies, the heir becomes successor of the decedent in both properties and debt. So, in addition to the decedent's property, his debt is transferred to the heir.

Although in Iranian Law the term *successor* has been used in Civil Law, but there is no a text about its concept and sentences. Legal doctrine influenced by French Civil Law, has accepted it and has analyzed its sentences on this base. But it seems that the principles of this term do not exist in Iranian and Islamic Legal system as it is in the Western Law.

This article attempts to analyze the concept and principles of Subrogation in Iranian and French Law through a comparative study.

Keywords: Subrogation Basis; Continuation of the Deceased Personality; Survival of Deceased' debt; Iranian and French Law.

* Associate Professor, Department of Private and Islamic Law, University of Tehran, Tehran, Iran.
Email: makazemy@ut.ac.ir

** Instructor at Faculty of Law, Islamic Azad University, Varamin-Pishva Branch, Tehran, Iran.
Email: jamshid.asgar1348@gmail.com



Bibliography

A) Book & Articles

- Imami, Seyed Hasan (1993). *Civil Law (1,2)*, 12th Edition, Tehran: Islamiyeh Publication. [In Persian]
- Jafari Langroudi, Mohammad Jafar (2007). *Al-Farigh*, 4th Edition, Tehran: Ganj danesh Publication. [In Persian]
- Katouziyan, Naser (1997). *Civil Law- General Rules Regarding the Contracts*, 2th Edition, Tehran: Enteshar Publication. [In Persian]
- Katouziyan, Naser (2000). *Empirical Method on Research in Law*, 1st Edition, Tehran: Enteshar Publication. [In Persian]
- Hashemi Shahroudi, Seyed Mahmoud & a Group of Reaserche (2002). *Mawsuat al-Fiqh ahl al- Bayt*, 1th Edition, Qom: Institute for Encyclopedia of Islamic Fiqh Based on Ahl Al Bait (p.b.u.th) Religion. [In Arabic]
- Hasani, Hashem (1998). *Nazariat al-Aqd fi Fiqhu al-Jafari*, 1st Edition, Beirut: Hashemi School Publication. [In Arabic]
- Husayni al-'Amili, Muhammad Javad (1998). *Miftah al-Karamah fi Sharh Qawa'id al-'Allamah*, 1st Edition, Qom: Islamic Publication Office. [In Arabic]
- Sabzevari, Seyed Abdol Aala (1992). *Mohazb al-ahkam*, 19th Edition, Qom: Ayatollah Sabzevari office Publication. [In Arabic]
- Shahid Sadr, Seyed Muhammad Baqer (1999). *Mawara al-Fiqh*, 1st Edition, Beirut: Dar Al-Azva' Publication and Distribution. [In Arabic]
- Tabataba'i, Seyyed Ali bin Muhammad (1997). *Riyad al-Masa'il fi Tahqiq al-Ahkam bi l-dala'il*, 10th Edition, Qom: Al aL-Bayt Publication.
- Ameli, Zayn al-Din bin 'Ali (Shahid al-Thani) (1989). *Al-Rawda al-Bahiyya fi Sharh al-Lum'at al-Dimashqiyya*, 1st Edition, Qom: Davari Bookstore. [In Arabic]
- Fayz Kashani, Muhammad Mohsen (?). *Mafatih al-Shara'i'*, 1st Edition, Qom: Najafi Mara'shi Library Publication. [In Arabic]
- Mojahed Tabataba'i, Seyed Muhammad (?). *Al-Manahil*, 1st Edition, Qom: Al-Albayt Publication. [In Arabic]
- Mousavi Bojnourdi, Seyed Mirza Hassan (1998). *Al-Qawa'id Al-Fiqhiyyah*, 1st Edition, Qom: Al -Hadi Publication. [In Arabic]
- Najafi, Muhammad Hassan (1983). *Jawahir Al-Kalam fi Sharh Shara'i' al-Islam*, 7th Edition, Beirut: Al -Tarath Al Arabi Publication. [In Arabic]
- Demogue, Rene (1901). "Essai d'une Theorie Generale de la Subrogation réele", *Rev. Critique Legis. & Juris*, nouvelle série, Vol. 30, pp. 295-310.

- Deshayé, Oliver (2008). "Ayant cause, in: Répertoire de Droit Civil Dalloz", Stand: Januar 2008, pp. 1–25.
- Ghestin, Jacques; Marc Billiau & Grégoire Loiseau (2005). *Traité de Droit Civil, Le régime des créances et des dettes*, Paris: L.G.D.J.
- Malaurie, Philippe; Laurent Aynès & Stoffel-Munck (2003). *Droit Civil, Les obligations*, Paris: Défrenois.
- Marseille, Georges-Charles (1873). *Continuation de la Personne d'un défunt, conséquences de cette fiction, en Droit Romain et en Droit Français*, Thèse pour le doctorat, Paris: Faculté de droit de Paris.
- Marty, Gabriel & Pierre Raynaud (1972). *Droit Civil, T.I, Introduction générale à l'étude de Droit*, 9^è Edition, Paris: Sirey.
- Mazeaud, Henry; Léon Mazeaud & Jean Mazeaud (1998). *Leçons de Droit Civil, T. IV, V. II, Successions et Libéralités*, Éd. 9, Par Laurent Leveneur et Sabine Mazeaud-Leveneur, Paris: Montchrestien.
- Mazeaud, Henry; Léon Mazeaud & Jean Mazeaud (2000). *Leçons de Droit Civil, T. I, V. I, Introduction à l'étude du droit*, Éd 12, Par François Chabas, Paris: Montchrestien.
- Savuax, Éric (2014). *Répertoire de Droit Civil*, Paris: Dalloz.
- Terré François; Philippe Simler & Lequette Yves (1999). *Droit Civil, Les obligations*, Éd 7, Paris: Dalloz.

B) Website

- "La Continuation de la Personne du défunt: Principe général du droit français des Successions?", Nicod, Mark (2014). Presses de l'université Toulouse 1 capitale, pp.141–150, accessible à: <https://books.openedition.org>.